

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 22

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 28, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr. Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

19 Jennifer Bean, FAPR, RDR, RMR, CCR
20 United States Court Reporter
21 Certified Realtime Reporter
22 333 Lomas, Northwest
23 Albuquerque, NM 87102
24 Phone: (505) 348-2283
25 Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1	I N D E X	
2	EXAMINATION OF NANCY STEMCO	
3	By Ms. Jacks	7172
4	By Mr. Lowry	7175
5	By Mr. Castellano	7177
6	By Mr. Villa	7213
7	By Ms. Jacks	7221
8	By Mr. Castellano	7246
9	By Mr. Villa	7252
10	EXAMINATION OF HEATHER BRISLEN, M.D.	
11	By Ms. Fox-Young	7255
12	By Ms. Armijo	7368
13	By Ms. Fox-Young	7483
14	By Ms. Armijo	7492
15	EXAMINATION OF CLINT SNODGRASS	
16	By Ms. Duncan	7493
17	By Ms. Armijo	7510
18	EXAMINATION OF ERNIE HOLGUIN	
19	By Mr. Villa	7514
20	By Ms. Armijo	7534
21	By Mr. Villa	7539
22	By Ms. Armijo	7541
23	By Mr. Villa	7542
24		
25		

1	REPORTER'S CERTIFICATE	7544
2	EXHIBITS ADMITTED	
3	Defendants' FY Admitted	7368
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

SANTA FE OFFICE
 119 East Marcy, Suite 110
 Santa Fe, NM 87501
 (505) 989-4949
 FAX (505) 820-6349



MAIN OFFICE
 201 Third NW, Suite 1630
 Albuquerque, NM 87102
 (505) 843-9494
 FAX (505) 843-9492
 1-800-669-9492
 e-mail: info@litsupport.com

1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody being here and
3 ready to go and on time.

4 Let me cover this issue with Juror Number
5 14, bring you up to date on that, and I think we're
6 probably at a close. I received some notes
7 yesterday afternoon, but we were so caught up on
8 some other things throughout the afternoon that I
9 was unable to kind of report them as they came in.

10 But Senior Inspector Luis Loya requested
11 time to brief me on the incident yesterday regarding
12 Juror Number 14, Cameron Johnston. And that came at
13 the end of the day, after we'd concluded court.

14 Earlier in the day, Ms. Standridge
15 noticed, witnessed, and heard Juror Number 12,
16 Bridget Murphy, and Juror Number 7, Stanley Dixon,
17 teasing Juror Number 14, Cameron Johnston, about the
18 handgun issue. Juror Number 14 did not respond to
19 either. He did ask if the Judge would be giving
20 him, quote, a "butt chewing."

21 Last night, when I talked to the
22 inspector, he indicated that the Police Services had
23 done their investigation. They think it's totally
24 innocent. They're not going to bring any charges.
25 They said the gun checked out. It was being

1 licensed. He's a concealed carry permit holder.
2 He's very embarrassed by it. He, as far as they can
3 tell and as far as they concluded, it was purely an
4 oversight on his part, putting it in his bag and
5 bringing it here.

6 So from the Federal Police Services, it's
7 a closed incident, and I think it is for the
8 Marshals, as well.

9 All right. Ms. Fox-Young, you had
10 something you need to raise as far as a discovery
11 issue?

12 MS. FOX-YOUNG: Your Honor, I do. I don't
13 know if any of the counsel wanted to address that
14 matter with the juror first? It looked like Ms.
15 Jacks was getting up.

16 MS. JACKS: Can I confer with Ms.
17 Fox-Young, please?

18 THE COURT: Certainly.

19 MS. FOX-YOUNG: Your Honor, I guess I'll
20 take up the issue of the juror first. I don't have
21 the transcript in front of me, but it's my
22 recollection that the Court informed the parties
23 yesterday that Ms. Standridge had given the juror
24 direction not to discuss this matter with the other
25 jurors, and that he had made the representation that

1 he hadn't and wouldn't.

2 And clearly now, based upon the notes that
3 have been provided to the Court and what the Court
4 has just informed the parties, that didn't happen.

5 THE COURT: Why do you conclude that?
6 There's nothing that I said that's inconsistent with
7 it. When he was teased about it, he did not
8 respond.

9 MS. FOX-YOUNG: Well, I guess I don't know
10 how any of the other jurors knew about it, if he
11 hadn't informed them.

12 THE COURT: Well, we knew yesterday, when
13 I told that you that there were jurors and FPDs down
14 there when he was pulled out of line and sent back
15 to the car. So I don't know how they know. I
16 haven't gone any further than that.

17 MS. FOX-YOUNG: So I guess it just isn't
18 clear at this point whether or not they know based
19 upon the fact that he told them or that they
20 observed it.

21 THE COURT: It's clear, from what we
22 understand from the juror, that he has not talked to
23 anybody about it. So his representations to us are
24 -- and Ms. Standridge can confirm what she's seen --
25 he did not respond when he was teased by the jurors.

1 MS. FOX-YOUNG: Okay, Your Honor. Well,
2 with that clarification, I'll move on. I can't speak
3 for the other counsel.

4 But I would like to raise this discovery
5 matter briefly with the Court. On the 25th, which I
6 believe was Sunday, counsel received an email from
7 the Government regarding a bag of property that had
8 apparently belonged to Mario Rodriguez. And the
9 representation from Ms. Armijo, as forwarded to her
10 from her agents at the FBI, was that Agent Sainato
11 had had these documents under his desk since
12 approximately July of last year, and they had
13 actually been obtained through STIU from the
14 Penitentiary of New Mexico.

15 And back in the summer, there had been
16 several SNM members who had property still at PNM,
17 and the FBI had been apprised of that by NMCD
18 officials; and that Agent Sainato had ended up with
19 these documents under his desk, although of course
20 he is a member of the prosecution team, the
21 Corrections Department officials are members of the
22 prosecution team, including Mr. Cupit, who was
23 involved.

24 They hadn't looked at these documents.
25 That's the representation from the Government.

1 Yesterday, the Court will recall that
2 Agent Stemo testified about the letter that was
3 included in that batch of documents from Mario
4 Rodriguez, and that's Exhibit FU -- FV. Excuse me,
5 Your Honor. And that exhibit was admitted through
6 Agent Acee.

7 That document, as Agent Stemo
8 acknowledged, is absolutely contradictory to other
9 statements that Mr. Rodriguez made on the stand and
10 that he has made to the Government. It's clearly
11 exculpatory information.

12 Agent Stemo's testimony is something along
13 the lines of, she ultimately did review these
14 materials before returning them, before planning to
15 return them to Mr. Rodriguez.

16 Our question now is: What else is in this
17 bag of materials? Why wasn't it produced to the
18 defense? Why was this single document only produced
19 after the Government had rested and after Mario
20 Rodriguez had already taken the stand?

21 And so we had asked the Government to
22 produce all of these documents. Immediately upon
23 receiving this email on February 25th, I made that
24 request. I didn't receive a response. I made
25 subsequent requests. I asked that the Government

1 perform a Brady and Giglio review of the documents
2 if they weren't going to produce all of them.

3 I finally received a response yesterday,
4 and the Government has indicated this morning that
5 the documents will be provided and that they are
6 copying them.

7 My concern is, I don't understand how a
8 bag of documents from one of the Government's main
9 testifying informants didn't make its way to the
10 defense. I think it's likely all Rule 16.

11 Certainly we already know about one
12 document that has exculpatory information in it, and
13 it's far too late for this stuff to be produced, and
14 it absolutely prejudices the defense. And so I
15 think we need immediate production. We need an
16 opportunity to review it and an opportunity to
17 re-call witnesses who we may need to recall.

18 You know, and the Court will recognize
19 perhaps that is something of a remedy, but when the
20 Government has already rested its case and we've
21 completed cross-examination of these witnesses, it
22 really prejudices the defense when we haven't had
23 the opportunity to even review these materials
24 which, you know, if we get them today, we will
25 attempt to review them immediately. But as I stand

1 here, they have not yet been produced.

2 And I'd also ask that if the FBI or NMCD
3 or anybody else on the prosecution team, including
4 the prosecutors, are in possession of other property
5 for these cooperating witnesses, including writings
6 and other statements, that that immediately be
7 produced.

8 Thank you, Your Honor.

9 THE COURT: All right. Mr. Beck, do you
10 have a response?

11 MR. BECK: I do, Your Honor.

12 The documents were looked through one
13 time. They were looked through again February 23rd.

14 THE COURT: Who looked through these?

15 MR. BECK: Originally, I believe sometime
16 in the summer, late summer of 2017, Special Agent
17 Sainato and Task Force Officer Cupit looked through
18 the paperwork and these documents.

19 THE COURT: Has an attorney from your
20 office looked through them?

21 MR. BECK: I reviewed quickly the
22 documents last night. And that's why they're being
23 copied and produced.

24 THE COURT: Do you have them up here now?
25 I should say down here.

1 MR. BECK: Down here.

2 THE COURT: Do you have them?

3 MR. BECK: Yes. So the box of
4 documents -- so going back a little bit, on February
5 23rd when they were looked through, I think, as
6 Special Agent Stemo testified yesterday, she
7 recognized that the document was important and
8 contradictory to some of the testimony or previous
9 statements of Mr. Rodriguez.

10 As soon as she recognized that, the FBI
11 alerted us. We alerted the defense. We produced
12 that report, and they were able to use it with
13 Special Agent Acee, and now Special Agent Stemo.

14 The rest of the documents in the property
15 file were brought to our office in Las Cruces
16 yesterday. As soon as we had them, last night after
17 we finished, I briefly looked through the documents.
18 There was a journal in there. Based on -- the
19 journal had entries, I think, reflecting times when
20 Mr. Rodriguez was a juvenile.

21 Based on my review of it, we asked Special
22 Agent Sainato to make copies of all of the documents
23 in that folder as quickly as possible so that we may
24 produce them to the defense immediately.

25 That being said, I don't believe that they

1 are exculpatory. I don't believe they're Rule 16.
2 I don't believe they're Brady/Giglio documents. But
3 because they may -- I could see an argument for some
4 of them being useful to the defense or Brady/Giglio,
5 is why out of an abundance of caution I asked the
6 United States -- I asked Agent Sainato to make
7 copies of those and make them available as soon as
8 possible. He is currently making copies of those
9 documents at the FBI -- I don't know what's it
10 called -- branch office down here in Las Cruces.
11 That's not the official term for it.

12 But that is down the road a little ways.
13 As soon as those copies are made, he's bringing them
14 to the Court for the defendants to use.

15 THE COURT: So this will be everything
16 that's in this basket or bag?

17 MR. BECK: All of the documents in the
18 bag. There may be -- it's a bag inside of a box.
19 And so all of the documents are being copied. I
20 don't remember offhand; I think there were some
21 other materials in there, objects, but I don't
22 believe that -- we're not going to copy those. And
23 there were -- I think as Nancy Stemo testified, as
24 far as we can tell, to our knowledge, there was no
25 weapon or drugs in that box, which is why Ms. Stemo

1 I think said she reviewed it originally.

2 The document from Mr. Rodriguez that was
3 entered into evidence with Special Agent Acee, about
4 which Special Agent Acee and Special Agent Stemo
5 testified about, there is an argument that it is
6 exculpatory. But given the testimony in court,
7 vigorous cross-examination, it's the United States'
8 position that it's not material. So there has not
9 been a Brady/Giglio violation as to that.

10 THE COURT: Well, Ms. Fox-Young, do you
11 see, given what the Government is doing and what
12 you're going to get today, do you see anything else
13 I can really do at the present time until you get
14 these documents?

15 MS. FOX-YOUNG: Yes, Your Honor. I think,
16 first of all, there's no question that that document
17 is material, and I won't spend a lot of time on that
18 unless the Court wants --

19 THE COURT: Let's focus on --

20 MS. FOX-YOUNG: And I am focusing, Your
21 Honor.

22 THE COURT: Let's focus on what -- is
23 there something I need to do before we bring the
24 jury in?

25 MS. FOX-YOUNG: Your Honor, I think you

1 need to order the Government to make immediate
2 production. I asked for these documents immediately
3 on the 25th. It is now the 28th. The Government
4 has acknowledged that there is at least an argument
5 that some of the documents are exculpatory.

6 THE COURT: Hold on just a second. What
7 time of day do you think these documents are going
8 to be produced?

9 MR. BECK: I expect that they'll be here
10 sometime this morning, as quickly as the FBI can
11 make copies. So the United States doesn't oppose
12 the Court ordering us to produce them immediately.

13 THE COURT: Okay. It will be so ordered.

14 MS. FOX-YOUNG: And further, Your Honor, I
15 think the Court, given under Kyles v. Whitley, these
16 agents are absolutely member of the prosecution
17 team, there's no explanation for why these documents
18 sat for months and months and months.

19 THE COURT: All right.

20 MS. FOX-YOUNG: And just one more thing.
21 I'd like the Court to order --

22 THE COURT: No, you're arguing, you know,
23 your motion to dismiss.

24 MS. FOX-YOUNG: It'll take me -- no, it's
25 not, Your Honor. I'm asking for relief.

1 THE COURT: Well, I gave you a chance.

2 MS. FOX-YOUNG: On the other documents.

3 THE COURT: All rise.

4 (The jury entered the courtroom.)

5 THE COURT: Good morning, ladies and
6 gentlemen. I appreciate you being back and ready to
7 go and on time. I appreciate all you're doing for
8 us and the way you've gone about your task. You're
9 a great bunch to work with, and we appreciate it
10 very much.

11 All right. Ms. Stemo, you're still under
12 oath.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Ms. Jacks, if you wish to
15 continue your direct examination of Ms. Stemo, you
16 may do so at this time.

17 MS. JACKS: Thank you. I do. I was
18 almost done yesterday.

19 NANCY STEMOS,
20 after having been first duly sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION (Continued)

23 BY MS. JACKS:

24 Q. Good morning, Ms. Stemo.

25 A. Good morning.

1 Q. So yesterday when we broke, we were
2 talking about whether Mario Rodriguez had ever told
3 you, or members of the FBI in your presence, prior
4 to this trial, that he had exchanged notes with Lupe
5 Urquizo on the afternoon of March 6, 2014. Do you
6 recall those questions?

7 A. I do.

8 Q. And at the end of the day, you said that
9 it was sort of in your mind that maybe Mr. Rodriguez
10 had told you that -- I think you said he didn't tell
11 you that in the October 24, 2017, interview, right?

12 A. Correct.

13 Q. And we also reviewed the 302 that you
14 prepared from the February 3, 2018, interview?

15 A. Correct.

16 Q. And he didn't tell you that during that
17 interview?

18 A. No, he didn't.

19 Q. But at the end of the day, you said maybe
20 there was something that related to that in one of
21 the other interviews you participated in?

22 A. Correct.

23 Q. So you got here a little bit early this
24 morning, right?

25 A. I did.

1 Q. And did you have a chance to review the
2 FBI 302s from three additional interviews with Mario
3 Rodriguez?

4 A. I did.

5 Q. And specifically, did you review the
6 11-page 302 dated November 1st, 2017?

7 A. I did.

8 Q. And the two-page 302 dated November 14,
9 2017?

10 A. Yes.

11 Q. And the one-page 302 dated January 22,
12 2018?

13 A. Yes.

14 Q. And were those all interviews of Mario
15 Rodriguez prior to this trial?

16 A. They were.

17 Q. And were they all interviews concerning,
18 at least in part concerning the circumstances
19 surrounding the Molina homicide?

20 A. They were.

21 Q. And based on your -- when you reviewed
22 those 302s, did those refresh your memory about what
23 had been discussed with Mr. Rodriguez on those three
24 dates?

25 A. They did.

1 Q. And I guess now I want to re-ask the
2 question. So on any of those three dates did Mr.
3 Rodriguez tell you that he exchanged notes with Lupe
4 Urquizo on the afternoon of March 6, 2014, after
5 Urquizo was transferred to Southern?

6 A. No, he didn't. I think I was remembering
7 Lupe Urquizo telling us that.

8 Q. Okay.

9 MS. JACKS: Thank you. I have nothing
10 further.

11 THE COURT: Thank you, Ms. Jacks.

12 Mr. Lowry? Ms. Duncan? Ms. Bhalla? Mr.
13 Maynard? Anybody? All right. Mr. Castellano? Oh,
14 are you going to do some?

15 MR. LOWRY: Yes, Your Honor.

16 THE COURT: All right. Mr. Lowry.

17 MR. LOWRY: Just a quick question.

18 THE COURT: All right. Mr. Lowry.

19 was questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LOWRY:

22 Q. Good morning, Ms. Stemo.

23 A. Good morning.

24 Q. Did you audio-record any of the interviews
25 you had or attended with Mr. Rodriguez or other

1 cooperators in this case?

2 A. I don't think I did. I believe the
3 meeting between Mario Rodriguez and Ronald Sanchez
4 was recorded.

5 Q. Okay. And how many interviews do you
6 think you attended in the course of this
7 investigation?

8 A. That's hard to say. A couple dozen.

9 Q. Aside from that one interview, were any
10 attempts made to record the other interviews?

11 A. I don't think so.

12 Q. Why not?

13 A. We're not required to do so unless it's
14 post-Miranda, right after they've been arrested.

15 Q. Would it have provided everybody in this
16 room a better record to understand what transpired
17 at those meetings if they were audio-recorded?

18 A. It could have.

19 MR. LOWRY: No further questions, Your
20 Honor.

21 THE COURT: Thank you, Mr. Lowry.

22 All right. Mr. Castellano, do you have
23 redirect of Ms. Stemo?

24 MR. CASTELLANO: Yes, Your Honor.

25 THE COURT: Mr. Castellano.

1 MR. CASTELLANO: Thank you, sir.

2 REDIRECT EXAMINATION

3 BY MR. CASTELLANO:

4 Q. Good morning, Agent Stemo.

5 A. Good morning.

6 Q. And had you recorded these things, is it
7 possible that we would have more evidence of guilt
8 reflected in the recordings, as opposed to just
9 relying on notes and reports?

10 MS. JACKS: Objection, calls for
11 speculation.

12 THE COURT: Sustained.

13 BY MR. CASTELLANO:

14 Q. Now, yesterday for part of your
15 examination they had Mr. Rodriguez' picture up here.
16 And are you familiar with Mr. Rodriguez?

17 A. I am.

18 Q. How are you familiar with him?

19 A. I've interviewed him a couple of times.

20 Q. And had you seen him before in court
21 before he decided to debrief and cooperate with the
22 Government?

23 A. I had.

24 Q. Has your perception of him changed from
25 before you met him and after you met him?

1 MS. JACKS: Objection, relevance.

2 THE COURT: Overruled.

3 A. It did change. He'd seemed more relaxed,
4 like a burden had been lifted, after he decided to
5 cooperate.

6 Q. And were you there when he first decided
7 to cooperate?

8 A. I was.

9 Q. What was his demeanor like?

10 A. Initially, he seemed aggressive and tough;
11 but after a couple of hours of the interview, he
12 started to cry and was very emotional about his
13 decision to cooperate.

14 Q. And so over time, has your perception of
15 him changed?

16 A. It has.

17 Q. You were asked about your report and this
18 statement about Rudy Perez being scared. Do you
19 remember that?

20 A. I do.

21 Q. And the statement that he was down for
22 whatever, as long as it wasn't him?

23 A. Yes.

24 Q. Now, in your notes did you write down
25 anything other than "Rudy is scared"?

1 A. I don't think I did.

2 Q. So when you wrote that down, did Mr.
3 Rodriguez give you any description of how Mr. Perez
4 looked?

5 A. No.

6 Q. And, for example, are you aware from the
7 recordings that Mr. Perez said he was actually sick
8 on that day?

9 A. Not personally, no.

10 Q. Have you heard that recording?

11 A. No.

12 Q. So other than that, did he provide any
13 description of Mr. Perez' demeanor, what he looked
14 like, what his facial expression was?

15 A. He did not.

16 Q. Do you also recall from the statements
17 that Mr. Rodriguez gave you, that when he first
18 walked into Jerry Montoya's cell with a shank in his
19 hand, Jerry Montoya raised his hands?

20 A. He did.

21 Q. And did he also appear scared?

22 A. I believe so.

23 Q. Are you aware -- obviously you're familiar
24 with this case now, so you know that even though Mr.
25 Montoya had an initial reaction, he participated in

1 the murder of Javier Molina?

2 A. He did.

3 Q. I want to ask you about this exhibit.

4 It's I believe, Defendants' FV, Foxtrot-Victor. And
5 in a second, I'll use the visualizer here. I'm
6 putting my own copy in here because I marked it up.
7 I didn't want to mark the Defendants' exhibit. This
8 is a copy of FV.

9 So first of all, when this document was
10 discovered this weekend in Mr. Rodriguez' property,
11 what significance did it have to you?

12 A. I knew that his writing contradicted a lot
13 of what he told me initially.

14 Q. Now, let's put this in chronological
15 order. If this is dated October 16, 2014, if it was
16 made on that date, this would be a statement he made
17 before he spoke to you; is that correct?

18 A. Correct.

19 Q. So if this was found in his property --
20 and the property, what was it doing in the box? Was
21 it basically personal property belonging to Mr.
22 Rodriguez?

23 A. Pretty much, yes.

24 Q. Was that personal property that was
25 initially stored at the Corrections Department?

1 A. Correct.

2 Q. And you were returning the item to Mr.
3 Rodriguez or to the Corrections Department. Is that
4 when you decided to make sure you looked at the box,
5 to make sure there wasn't any contraband in there?

6 A. Yes.

7 Q. And then when you found this document, it
8 had significance to you because it was something
9 different from what Mr. Rodriguez told you?

10 A. Correct.

11 Q. But in terms of the order of time, this
12 was actually written in 2014, and he gave statements
13 to you later than that, correct?

14 A. Correct.

15 Q. Actually, in the fall of last year?

16 A. Yes.

17 Q. So looking at this document, is it clear
18 to you that statements in here -- and we'll go
19 through them one at a time -- statements in here you
20 know are not true from what you know about this
21 investigation?

22 MR. VILLA: Objection, Your Honor, as to
23 what is true and isn't true.

24 THE COURT: Yeah, I don't think that she
25 probably ought to be the one answering that.

1 MR. CASTELLANO: I'll rephrase, Your
2 Honor.

3 BY MR. CASTELLANO:

4 Q. Okay. So let me start here in the portion
5 I have highlighted. There is an indication that:
6 "Martinez and Jason Wright's statements from March
7 10th, 2014, are false. Never once did I witness/see
8 Jerry Montoya in possession of any sort of weapon or
9 assault Javier Molina."

10 Now, having spoken to Mr. Rodriguez in the
11 fall of last year when he decided to cooperate, did
12 he tell you something different?

13 A. He did.

14 Q. And, in fact, did he tell you that Jerry
15 Montoya had any weapon in his hand?

16 A. He did.

17 Q. And when he decided to cooperate, did he
18 also tell you that in fact there was an assault on
19 Javier Molina?

20 A. Correct.

21 Q. And that he was part of it?

22 A. Yes.

23 Q. And given the fact this was found in his
24 personal property, did you have any indication that
25 he ever sent this to anybody?

1 A. No, it happened to be an original.

2 Q. So have you found this in any other place
3 other than his personal property that was sitting in
4 a box?

5 A. No.

6 Q. Turning to the next statement, so in other
7 words, this statement would have been made a
8 statement before he cooperated?

9 A. Correct.

10 Q. And it would have been made -- if it's
11 made in October of 2014, this is still when the
12 state case was pending?

13 A. Correct.

14 Q. Okay. Looking at the next statement I've
15 highlighted on this exhibit, it says: "Also, I'd
16 like to note that it'd be impossible for anyone to
17 rush into a room with anyone other than that room's
18 occupants without the rooms in Las Cruces prison
19 being very overcrowded."

20 Now, after he decided to cooperate, did
21 Mr. Rodriguez tell you something different than
22 that?

23 A. Yes.

24 Q. What did he tell you?

25 A. He said that he, Timothy Martinez, and

1 Javier Molina were all in Javier Molina's cell.

2 Q. So, in fact, by his own admission they all
3 fit into that cell in some way?

4 A. They did.

5 Q. Okay. I'm turning to the third part I've
6 highlighted on this exhibit where it states, "Not at
7 any point in there did I see any sort of weapons or
8 Mr. Montoya assault Mr. Molina. I will testify to
9 this statement under oath due to the allegations
10 made by Martinez and Mr. Wright being false."

11 After he decided to cooperate, did he tell
12 you something different than that?

13 A. He did.

14 Q. What did he tell you in terms of -- let's
15 start with any weapons possessed by Mr. Montoya or
16 Mr. Montoya assaulting the victim?

17 A. I believe me told me that he saw Mr.
18 Montoya stabbing Mr. Molina inside of Mr. Molina's
19 cell.

20 Q. In fact, he was part of that conspiracy,
21 was he not?

22 A. He was.

23 Q. So when he said, "I will testify to the
24 statement under oath," did he testify to this
25 statement under oath?

1 A. I believe -- the one in the letter?

2 Q. Yes.

3 A. I believe he did not.

4 Q. Even though you know the statements in
5 here aren't true, this is still significant to you
6 because you knew it would be something that the
7 defense attorneys would want; is that true?

8 MR. VILLA: Objection to the form of the
9 question stating that the statements aren't the
10 truth.

11 THE COURT: Well, I think I understand the
12 question. Overruled.

13 A. Yes.

14 Q. So under those circumstances, then, did
15 you make sure that it was turned over immediately to
16 the defense attorneys?

17 A. Yes.

18 Q. And is this -- now, isn't this letter
19 consistent with kind of the scheme these guys had
20 going when it was still a state case?

21 A. I believe so.

22 MR. VILLA: Objection.

23 THE COURT: What's the objection?

24 MR. VILLA: Well, I think that it calls
25 for an opinion that is essentially for the jury to

1 decide whether these statements are consistent with
2 what others have testified or said.

3 THE COURT: Well, let's let the jury make
4 these determinations.

5 MR. CASTELLANO: Sure, Your Honor.

6 BY MR. CASTELLANO:

7 Q. Are you aware of other letters sent by
8 other cooperators, and specifically letters sent by
9 Jerry Armenta to Jerry Montoya's attorney?

10 A. I haven't read them, but I've heard of
11 them.

12 Q. And are you aware, through what you've
13 heard of them, that that was a means of Mr. Armenta
14 taking the responsibility for the charges when it
15 was a state case?

16 MR. VILLA: Objection, calls for hearsay.

17 THE COURT: Well, she isn't familiar with
18 the letters, so I think we'd better just let this
19 go.

20 Sustained.

21 BY MR. CASTELLANO:

22 Q. Going back to this date, October of 2014,
23 that was still a state prosecution and not a federal
24 case, correct?

25 A. Correct.

1 Q. And, in fact, this case wasn't even
2 indicted until December of 2015?

3 A. Correct.

4 Q. Yesterday you were asked about a statement
5 by Timothy Martinez in which he indicated that Rudy
6 Perez told him something. Do you remember that?
7 About the shanks?

8 A. I do.

9 Q. And then there was talk about him being at
10 Torrance County Detention Center and then being
11 moved after that?

12 A. Yes.

13 Q. Do you know why people were moved after
14 they decided to cooperate?

15 A. It's unsafe for cooperators to be housed
16 with defendants.

17 Q. At that point, if it became known that
18 Timothy Martinez had cooperated, he could be put in
19 harm's way?

20 A. He could.

21 Q. And so under these circumstances, every
22 time somebody decided to cooperate, were they then
23 removed from any facilities where -- or moved
24 separately from any facilities where pending
25 defendants were?

1 A. Yes.

2 Q. You were also asked about Billy Cordova in
3 this recording in April of 2017 of Gabriel Valdivia.
4 Do you remember that?

5 A. I do.

6 Q. How did that come about? Because you said
7 you oversaw it, but it didn't sound like it was
8 necessarily an FBI operation. What were the
9 circumstances of how that recording came about?

10 A. I believe personnel from the New Mexico
11 Department of Corrections had information that Mr.
12 Valdivia was talking to Mr. Cordova. They requested
13 a recording device from the FBI because they don't
14 have any of their own, so we provided one to them.
15 After the recordings were made, they turned it over
16 to me, and I processed that evidence into our
17 evidence and then made a report from it.

18 Q. Okay. So that was basically at the
19 Corrections Department's request?

20 A. Correct.

21 Q. And at that point, Billy Cordova wasn't
22 even working as a confidential human source for the
23 FBI?

24 A. Correct.

25 Q. Did the FBI compensate him for that?

1 A. We did not.

2 Q. And did those recordings capture
3 incriminating statements by Mr. Valdivia?

4 A. They did.

5 Q. Now, when it comes to debriefs and
6 interviewing people, do you know everything that
7 they know after you finish meeting with them, even
8 if it's for a few hours?

9 A. No.

10 Q. And why is that?

11 A. I don't think it's possible to get every
12 piece of information from someone in a couple of
13 hours.

14 Q. And even if someone is debriefed, let's
15 say three or four times, is there still more
16 information to be had?

17 A. Yes.

18 Q. And as we got closer to the actual trial
19 of this particular case, did the evidence or the
20 interviews become more specific and pointed at this
21 case?

22 MS. JACKS: Objection, leading.

23 THE COURT: Overruled.

24 A. They did.

25 Q. You were also asked about the exchange of

1 notes between Mr. Rodriguez and Mr. Urquizo. Do you
2 remember that?

3 MS. JACKS: Objection, misstates the
4 questions. The questions were about what people
5 said about the exchange of notes.

6 THE COURT: I'll let you deal with it on
7 redirect.

8 BY MR. CASTELLANO:

9 Q. Did you understand the point? That will
10 be my question. Go ahead and answer it.

11 A. Yes.

12 Q. So what do you recall about Mr. Urquizo
13 telling you?

14 MS. JACKS: Objection, beyond the scope.

15 THE COURT: Overruled.

16 A. I remember --

17 MS. JACKS: Objection, vague as to time.

18 THE COURT: Overruled.

19 A. Mr. Urquizo stated that Mario Rodriguez
20 had either shown a note over the door, because Mr.
21 Urquizo wanted to have somebody else hit at the same
22 time that the Javier Molina hit was supposed to
23 happen, in which Mr. Rodriguez basically apologized
24 that they needed to move quickly, and therefore the
25 individual Mr. Urquizo wanted to have hit wouldn't

1 be hit.

2 Q. So it's your understanding that there was
3 an exchange of communication between the two?

4 A. Yes.

5 MS. JACKS: Objection, calls for a
6 conclusion. The question was what he said, not what
7 actually happened.

8 THE COURT: Overruled.

9 Q. Is that your understanding, ma'am?

10 A. Yes.

11 Q. So you were asked what Mr. Rodriguez told
12 you, so I want to cover some of that information. I
13 don't need the specific number. Do you remember
14 approximately how many times you've now sat down
15 with Mr. Rodriguez to interview him?

16 A. Approximately five.

17 Q. And did those all start in the fall of
18 last year, the October/November timeframe?

19 A. Yes.

20 Q. So when you talked to him, did he give
21 information only about the Molina murder?

22 A. No.

23 Q. So starting in October, did he provide
24 information to you about other people named Samuel
25 Silva and Arturo Garcia, for example?

1 A. He did.

2 Q. Did he also mention any rival gang members
3 from Los Carnales gang?

4 A. I believe he did.

5 Q. If you're not sure, I can refresh your
6 recollection with the report.

7 A. Yes, please.

8 MR. CASTELLANO: May I approach, Your
9 Honor?

10 THE COURT: You may.

11 Q. Agent Stemo, after having reviewed the
12 report --

13 MS. JACKS: Your Honor, I would object.
14 This line of questioning appears to be eliciting
15 hearsay. Mr. Rodriguez testified.

16 MR. CASTELLANO: I'm not asking what was
17 said. I was asking about whether he gave
18 information about particular topics, Your Honor.

19 THE COURT: Well, let's see what the
20 question is, and then we can deal with any
21 objection.

22 BY MR. CASTELLANO:

23 Q. So the question was whether or not he also
24 discussed with you rival gang members from Los
25 Carnales gang?

1 A. He did.

2 MS. JACKS: I would object as, A, calling
3 for hearsay or based on hearsay; but also, B, what's
4 the relevance if he provided information on some
5 topic.

6 THE COURT: Overruled.

7 BY MR. CASTELLANO:

8 Q. Agent Stemo, the defense attorneys asked
9 you a lot of information about what Mario Rodriguez
10 did or didn't say, so let me ask you some more
11 questions about this. Did he tell you about the
12 assault on Robert Esparza over a \$900 drug debt?

13 A. Yes.

14 Q. So that was information that actually came
15 from him?

16 A. Yes.

17 Q. Did he also talk to you about the Alex
18 Sosoya assault?

19 A. He did.

20 Q. And his role in it, as well as Robert
21 Martinez' role?

22 A. Yes.

23 Q. Did he explain to you why the assault
24 happened?

25 A. Yes.

1 Q. Including how he prepared any weapons for
2 that assault?

3 A. He did.

4 Q. Now, as far back as October 24th of 2017,
5 did he provide you information about the Javier
6 Molina homicide?

7 A. He did.

8 Q. Did he also know Javier Molina was Crazy?

9 A. I believe so.

10 Q. Was that an a/k/a for him?

11 A. Yes.

12 Q. Did he provide any information about Mr.
13 Baca's feelings about rats --

14 A. Yes.

15 Q. -- and what should be done with them?

16 A. They should be killed.

17 Q. Did he provide you information about how
18 the paperwork got to the Southern New Mexico
19 Correctional Facility?

20 A. I believe he did.

21 Q. Do you remember if he mentioned the names
22 Cheech and Mr. Calbert?

23 A. Yes.

24 Q. And did he tell you what happened to the
25 paperwork once it arrived at the facility?

1 MR. LOWRY: Objection, hearsay, Your
2 Honor.

3 THE COURT: Well, are you trying to elicit
4 this out-of-court statement? And if you are, what
5 purpose are you trying to elicit it for?

6 MR. CASTELLANO: No, Your Honor. This is
7 specifically responsive to the defense indicating
8 what Mr. Rodriguez did not tell the FBI.

9 THE COURT: Well, I'm going to allow him
10 to answer the question just to determine the
11 credibility of the witness, but you can't consider
12 this statement that's being offered for the truth of
13 the matter. You can only use it in determining the
14 truthfulness of the witness that has testified
15 earlier in the trial.

16 BY MR. CASTELLANO:

17 Q. So did he provide information to you about
18 what happened to the paperwork once it arrived at
19 the facility?

20 A. Yes.

21 Q. Including his own role in the Molina
22 homicide?

23 A. He did.

24 Q. And Mr. Herrera's role in the homicide?

25 A. Yes.

1 Q. And Mr. Sanchez'?

2 A. Yes.

3 Q. And did he tell you about any discussions
4 he had with Mr. Sanchez about the homicide?

5 A. He did.

6 Q. And who should be picked to commit the
7 murder?

8 A. I believe so.

9 Q. Did he tell you how Timothy Martinez got
10 involved?

11 A. He did.

12 Q. Did he talk to you about the discussion
13 about whether or not the cameras should be covered
14 or not?

15 A. He did.

16 Q. And whose decision that was? Did he tell
17 you that?

18 A. He did.

19 Q. Did he explain to you how the pieces came
20 from the walker belonging to Rudy Perez?

21 A. He did.

22 Q. And did he indicate to you that he ever
23 said anything at all to Rudy Perez?

24 A. I don't think so.

25 Q. So not a word?

1 A. Not that I remember.

2 Q. And we don't need to worry about what was
3 said. Actually, was Mr. Perez meeting with somebody
4 before Mr. Rodriguez arrived, from what he told you?

5 A. He was.

6 Q. Who was he meeting with?

7 A. Mr. Daniel Sanchez.

8 MS. JACKS: Calls for hearsay. This isn't
9 inconsistent with the witness' testimony.

10 THE COURT: Well, do you have -- do you
11 have a transcript, either one of you, so that I can
12 make that determination?

13 MS. JACKS: Well, I would say that's on
14 the person offering the evidence.

15 THE COURT: Well, you're making the
16 objection. So find the transcript.

17 MS. JACKS: I'll find it.

18 THE COURT: And let's bring it up here to
19 the Court if you're going to make that objection.

20 MR. CASTELLANO: I'll move forward while
21 she's doing that, Your Honor.

22 THE COURT: All right.

23 BY MR. CASTELLANO:

24 Q. And from the discussion, did you learn how
25 close Rudy Perez was to the inner pod door where the

1 note was passed?

2 A. Yes.

3 Q. Was there discussion of Mr. Rodriguez
4 telling Mr. Martinez to go get high before this
5 happened?

6 A. There was.

7 Q. And how there might have been any change
8 of plan by Mr. Martinez about how Mr. Molina would
9 be incapacitated?

10 A. Yes.

11 Q. And is it true that Mr. Rodriguez actually
12 told you he's the person who made the shanks?

13 A. Yes.

14 Q. Did he also tell you what happened to the
15 shanks after the Molina murder?

16 A. I believe he told me what happened to one
17 of the shanks.

18 Q. And did he tell you what was supposed to
19 happen to each of the shanks after the murder?

20 A. He did.

21 Q. Did he tell you about any discussions he
22 had with Mr. Baca following the murder and regarding
23 the topic of paperwork?

24 A. Yes.

25 Q. I want to go back, take a step back for a

1 second. On the day that Mr. Rodriguez decided to
2 cooperate with the Government, are you aware of
3 whether or not he had any shanks with him?

4 A. He did.

5 Q. How did you become aware that he had
6 shanks?

7 A. He volunteered that information.

8 Q. And when he volunteered that information,
9 was there any indication that since he was
10 cooperating, he should no longer carry those
11 shanks?

12 A. Yes.

13 Q. Did he agree to do that?

14 A. He did.

15 Q. And did he in fact turn over the shanks to
16 the Marshal Service on that date?

17 A. He did.

18 Q. And where were those shanks concealed?

19 A. In his rectum.

20 Q. And isn't it true that he also told you
21 that he came to court with the shanks?

22 A. He did.

23 Q. Pretty much any time he came to court?

24 A. He did.

25 MS. JACKS: Your Honor, I can respond to

1 the Court's inquiry at this time.

2 THE COURT: All right. Ms. Jacks.

3 MS. JACKS: It's the transcript of
4 February 7, 2018, at page 192, beginning at line 11,
5 going through the end of page 194.

6 THE COURT: All right. We'll read it.

7 MS. JACKS: I'm sorry?

8 THE COURT: Read it.

9 MS. JACKS: Out loud to the jury?

10 THE COURT: Yes.

11 MS. JACKS: Well, I'd prefer not to do
12 that.

13 THE COURT: Bring it to the bench, then.
14 Bring me a copy.

15 (The following proceedings were held at
16 the bench.)

17 MS. JACKS: I don't have hard copies of
18 the transcript. Do you want to see it?

19 MR. CASTELLANO: I was asking who was
20 there first.

21 MS. JACKS: Right, and it comes -- I'm
22 just showing it to him.

23 MR. CASTELLANO: Show it directly to the
24 Judge. I appreciate that.

25 THE COURT: After you look at it --

1 MR. CASTELLANO: She can show it to you
2 now, Your Honor.

3 THE COURT: Do you need me to rephrase
4 your question, or do you want a ruling?

5 MR. CASTELLANO: I'll --

6 MS. JACKS: If Mr. Sanchez was talking to
7 Mr. Perez prior to him; and if so, what Mr.
8 Castellano was trying to ask was not impeaching what
9 Mr. Rodriguez testified to during this trial.

10 THE COURT: So do you agree this is the
11 statement that we're trying to impeach?

12 MR. CASTELLANO: I do, Your Honor. What
13 I'm saying is, once again the defense highlighted
14 what wasn't in the reports. Getting the information
15 that he actually did provide to the FBI.

16 MS. JACKS: My point is, it's improper for
17 the Government to go over everything a witness said
18 with this case agent unless they can show it's
19 either a prior inconsistent statement or if it's a
20 prior consistent statement. The purpose of the case
21 agent is not to simply repeat everything the
22 informant told her.

23 MR. CASTELLANO: You can bolster that if
24 credibility has been attacked, and clearly it has.

25 THE COURT: Tell me what I'm looking at

1 here. Is that your question?

2 MS. JACKS: No, this is Mr. Castellano's
3 direct of Mario Rodriguez, and what he's beginning
4 to ask him is about how he got the piece from Mr.
5 Perez' walker.

6 MR. CASTELLANO: I didn't question Mr.
7 Rodriguez, Your Honor.

8 MS. JACKS: Well, the Government.

9 THE COURT: Hold on. Don't talk. Let me
10 read it so I can understand.

11 MS. JACKS: You're going to have to page
12 through it. It's multiple pages, unfortunately.

13 THE COURT: Okay. How do you get your
14 page to move?

15 MS. JACKS: There are some arrow keys, and
16 I think if you just press down. Did it work? Let
17 me try. Let's do it this way. If you just click
18 right there, Your Honor, I believe it will work as
19 long as the arrow is down in that little --

20 THE COURT: Well, why don't you click it
21 for me. I'm not getting it to work.

22 MS. JACKS: This is the specific area.

23 THE COURT: You think this is it?

24 MS. JACKS: Well, I think right here is
25 the specific area Mr. Castellano was just inquiring

1 about.

2 THE COURT: Okay. Now, what are you
3 trying to elicit from Ms. Stemo?

4 MR. CASTELLANO: It's only in a summary
5 fashion. What I asked was who was there first,
6 having a conversation, and whether or not Mr.
7 Rodriguez said anything whatsoever to Rudy Perez.

8 THE COURT: Well, I don't see that that is
9 -- at least in this segment here, I don't see that
10 that would be either consistent with something he
11 said or impeaching what he said earlier, so I'll
12 sustain the objection on that question.

13 MR. CASTELLANO: Sure. I'll rephrase.

14 MS. JACKS: And there was an answer, so
15 I'd ask it be stricken. The answer was "Mr.
16 Sanchez." Because he asked: Who did he tell you
17 was talking to Mr. Perez prior?

18 THE COURT: Let me see it.

19 MR. CASTELLANO: And that would be
20 consistent.

21 MS. JACKS: But it doesn't meet the
22 criteria for prior consistent statement whatsoever.

23 THE COURT: I just don't think this
24 segment -- if the Government has got a different
25 segment that it's going on -- hold on.

1 So you think when he said "Mr. Daniel
2 Sanchez," that was a statement by the witness?

3 MS. JACKS: Yes, Your Honor.

4 THE COURT: All right. How do you want to
5 reference it for the jury?

6 MS. JACKS: I mean, I guess the reason
7 that I'm up here and trying to make this point is, I
8 think the Court should put an end to the Government
9 standing up here and doing exactly this, contrary to
10 the Rules of Evidence. So in terms of this one, I'm
11 not sure there is a good way to fix it at this
12 point.

13 THE COURT: Okay.

14 MS. JACKS: In terms of any sort of future
15 violations of the same sort, I think the Government
16 should be warned not to elicit hearsay unless they
17 have a good faith basis. And given their
18 performance, they should have to establish it
19 outside the presence of the jury.

20 THE COURT: Well, if we're trying to
21 bolster the witness with a prior consistent
22 statement, then make sure that there was an
23 inconsistent statement before you do it, and this
24 would be one at a time.

25 MR. CASTELLANO: We can, Your Honor. We

1 will take them one at a time. And of course the
2 defense is saying his entire testimony, all of the
3 statements are inconsistent. But I understand the
4 Court's ruling.

5 MS. JACKS: And in my defense, I only
6 asked Ms. Stemo about -- very limited sort of
7 questions regarding Mr. Rodriguez, regarding the
8 note. We didn't make a full-blast attack on this
9 witness.

10 THE COURT: I'm telling the Government,
11 before they ask a question, they need to be having
12 in mind and be ready to defend a prior inconsistent
13 statement if they're going to come back and turn it
14 into consistent statements.

15 MR. CASTELLANO: In addition, many of
16 these aren't even statements. I asked about certain
17 topics that he discussed with them, without saying
18 what was said.

19 THE COURT: Well, I might need to sustain
20 the outside the scope, then, if we're going to go
21 there, because it's not really relevant to the
22 direct examination. So I think probably if you're
23 going to go through this, you're just going to have
24 to have firmly in mind some inconsistent statement
25 of Mr. Rodriguez that you're coming back and trying

1 to offer some prior consistent statement to bolster.
2 If you can't link it up, I think we probably
3 shouldn't be doing this.

4 MR. CASTELLANO: Understood, Your Honor.

5 MR. LOWRY: Your Honor, may I be heard?
6 Your Honor, again, I'm going to point out that we
7 didn't elicit any of this testimony at all. And for
8 the United States to try to bolster the credibility
9 of its witness by soliciting comments about Mr. Baca
10 was uncalled for, and I'd ask the Court to strike
11 all of the testimony at this time.

12 THE COURT: Well, if we can identify where
13 he talked about Mr. Baca.

14 MR. LOWRY: Mr. Castellano asked her if
15 she recalled comments about Mr. Baca, about
16 snitches, and she said: Yes, he wanted snitches
17 killed.

18 THE COURT: And if you can do like
19 Ms. Jacks did and find that that is not a consistent
20 statement, I'll take a look at it. Do you want me
21 to do anything?

22 MS. JACKS: I'd ask the Court strike it
23 from the record. But in terms of instructing the
24 jury, no.

25 THE COURT: I'll strike Ms. Stemo's answer

1 about Daniel Sanchez.

2 MR. VILLA: And, Your Honor, yesterday on
3 direct, I elicited inconsistent statements from Mr.
4 Rodriguez, very limited to the statements about Mr.
5 Perez; and when he made that statement, if he was in
6 fear. I didn't get into any of this stuff in terms
7 of the scope.

8 THE COURT: Well, I'm defining what the
9 Government is going to be able to do here.

10 MS. BHALLA: Sorry, Your Honor. Very
11 quickly. We didn't ask any questions of this
12 witness, to avoid this very problem. So just for
13 the record, we would object to that line of
14 questioning, as well.

15 Thank you.

16 (The following proceedings were held in
17 open court.)

18 THE COURT: All right. Mr. Castellano?

19 MR. CASTELLANO: Thank you, Your Honor.

20 BY MR. CASTELLANO:

21 Q. Okay. So in addition to the information
22 he gave you on the Molina homicide, did he give you
23 information about the SNM in general?

24 A. He did.

25 Q. On November 1st, 2017, there was an

1 11-page report. Attached to that report, was there
2 something else provided to you by Mr. Rodriguez?

3 A. Yes.

4 Q. And did he basically handwrite -- let me
5 see -- ten pages worth of notes to share with the
6 agents?

7 A. He did.

8 Q. And in those ten pages of notes, did he
9 also provide information about the Javier Molina
10 murder?

11 A. I believe he did.

12 Q. Okay. Turning back to Government's
13 Exhibit FV, what was inconsistent between the
14 statements of Mr. Rodriguez when it came to Timothy
15 Martinez's role in the Molina homicide?

16 MR. VILLA: Objection, asked and answered.

17 THE COURT: Overruled.

18 MR. LOWRY: Your Honor, I'm going to
19 object on behalf of Mr. Baca as beyond the scope of
20 direct examination of Ms. Stemo and ask for a
21 limiting instruction as to all of this testimony.

22 THE COURT: Well, what tie to the direct,
23 what came up in direct that I guess --

24 MR. CASTELLANO: Well, the whole letter is
25 part of the direct, Your Honor.

1 THE COURT: Yeah, that's true.

2 MR. CASTELLANO: And it also refers to
3 prior inconsistent statements alleged by the
4 defense.

5 THE COURT: All right. Are you going to
6 elicit any statements about Mr. Baca?

7 MR. CASTELLANO: Not unless there's
8 something inconsistent with what's in the letter,
9 Your Honor.

10 THE COURT: All right.

11 MR. LOWRY: May I be heard? Mr. Baca
12 didn't bring up this letter at all.

13 THE COURT: I understand. I'm trying to
14 deal with your first objection.

15 So if, to be truthful in answering any of
16 the questions that Mr. Castellano is going to ask
17 you, you need to mention Mr. Baca, just alert him,
18 and then I'll bring counsel up here and we'll see
19 what's going on.

20 All right. Mr. Castellano.

21 MR. CASTELLANO: Thank you, Your Honor.

22 BY MR. CASTELLANO:

23 Q. So let me take a look at this statement
24 here. Okay. So in terms of prior inconsistent
25 statements, once again, was there an indication --

1 the letter says that he never saw Jerry Montoya in
2 possession of any sort of weapon or assault Javier
3 Molina. Did Mr. Rodriguez tell you something
4 different than that?

5 A. He did.

6 Q. What was it?

7 MR. VILLA: This has been asked and
8 answered.

9 THE COURT: Overruled.

10 A. I believe he stated he provided Mr.
11 Montoya with the shank; observed Mr. Montoya stab
12 Mr. Molina; and then he disposed of Mr. Montoya's
13 shank after the stabbing occurred.

14 Q. Where did he dispose --

15 MS. JACKS: Your Honor, I'm going to
16 object because the statements that Agent Stemo is
17 relating are not prior inconsistent statements.
18 They're statements made after this letter was
19 written.

20 THE COURT: Well, then what basis do you
21 have to bring these in, Mr. Castellano?

22 MR. CASTELLANO: Well, Exhibit FV would be
23 the prior inconsistent statement, Your Honor.

24 THE COURT: Well, I understand. It was
25 written earlier than the statements that are being

1 talked about here. So I think I'll sustain.

2 MS. JACKS: Will the answer be stricken,
3 please?

4 THE COURT: That answer will be stricken.

5 BY MR. CASTELLANO:

6 Q. Going back to this, do you in fact know
7 that this was written before Mr. Rodriguez met with
8 you?

9 A. If you go by the date that he provided on
10 the letter.

11 Q. In addition, did this come from the
12 Corrections Department property?

13 A. It did.

14 Q. And so did you have this statement, or the
15 FBI had this statement, prior to the time that you
16 met with Mr. Rodriguez and he cooperated?

17 A. I believe so.

18 Q. Why did Mr. Rodriguez cooperate?

19 A. I believe --

20 MS. JACKS: Objection, calls for
21 speculation.

22 THE COURT: Well, you can ask the
23 question, does she have an understanding, what was
24 her thought as to why he did it, but she can give
25 her thoughts. But you probably can't ask the

1 question that way.

2 MR. CASTELLANO: I'll rephrase.

3 MS. JACKS: Your Honor, no disrespect
4 meant to Agent Stemo, but what she understood or
5 what she thinks about that is not relevant to this
6 proceeding.

7 THE COURT: Well, it may be. We'll wait
8 until the follow-up questions. Overruled.

9 BY MR. CASTELLANO:

10 Q. After sitting down and talking with Mr.
11 Rodriguez, what was your understanding of why he
12 cooperated?

13 MS. JACKS: Same objection, calls for a
14 conclusion based on hearsay.

15 THE COURT: I've overruled these
16 objections.

17 A. He was tired of the lifestyle.

18 Q. And was he tired of carrying a weapon all
19 the time?

20 A. He was.

21 MS. JACKS: Objection, Your Honor. That
22 appears to be based on hearsay.

23 THE COURT: Sustained.

24 MS. JACKS: Can the answer be stricken?

25 THE COURT: It will be stricken.

1 MS. JACKS: Can counsel be admonished to
2 stop intentionally eliciting hearsay?

3 THE COURT: No. You can make objections
4 when the question is improper.

5 BY MR. CASTELLANO:

6 Q. I'm almost done here, Agent Stemo. Let me
7 just check my notes.

8 MR. CASTELLANO: May I have a moment, Your
9 Honor?

10 THE COURT: You may.

11 MR. CASTELLANO: Thank you. Thank you,
12 Your Honor. I pass the witness.

13 THE COURT: Thank you, Mr. Castellano.
14 Mr. Villa.

15 MR. VILLA: Thank you, Your Honor.

16 THE COURT: Mr. Villa.

17 REDIRECT EXAMINATION

18 BY MR. VILLA:

19 Q. Good morning, Agent Stemo.

20 A. Good morning.

21 Q. You just testified that Mr. Rodriguez told
22 you the reason he cooperated was because he was
23 tired of the life?

24 A. Yes.

25 Q. But isn't it true that he also said that

1 one of the reasons he cooperated was that the SNM
2 was so fucked up and there's no loyalty?

3 MR. CASTELLANO: Objection, calls for
4 hearsay.

5 THE COURT: Well, it seems to me that
6 you're doing the same thing that you were objecting
7 to Mr. Castellano doing.

8 MR. VILLA: Well, no, Your Honor. I think
9 this is elaborating on the testimony that she just
10 gave about what Mr. Rodriguez told her.

11 THE COURT: Sustained.

12 BY MR. VILLA:

13 Q. Do you agree with me that right before Mr.
14 Rodriguez cooperated, his trial on the Sosoya case
15 was a couple weeks from starting?

16 A. I believe it was a week away.

17 Q. A week away?

18 A. I think so.

19 Q. And the Sosoya case was an assault that
20 Mr. Rodriguez was charged with?

21 MR. CASTELLANO: Objection, beyond the
22 scope.

23 THE COURT: Overruled.

24 Q. Yes?

25 A. Correct.

1 Q. And he was charged along with Baby Rob or
2 Rob Martinez?

3 A. He was.

4 Q. And Rob Martinez was going to testify
5 against Mario Rodriguez, wasn't he?

6 A. He was.

7 Q. You've talked about how, when you
8 interviewed Mr. Rodriguez, that it felt like -- it
9 looked like he had a burden lifted, right?

10 A. Yes.

11 Q. This is the October 24th interview that
12 you did?

13 A. Yes.

14 Q. The first one?

15 A. Yes.

16 Q. And he began to cry as he talked about
17 cooperating and those sorts of things?

18 A. Yes.

19 Q. He was emotional?

20 A. He was.

21 Q. And that was the interview in which he
22 told you that when he took the piece from Mr. Perez '
23 walker, Mr. Perez looked scared?

24 A. Yes.

25 Q. And you understood that when Mr. Rodriguez

1 was telling you that, it wasn't about necessarily
2 something Mr. Perez said to him, but the way he
3 viewed Mr. Perez' demeanor?

4 A. We didn't discuss why he said Mr. Perez
5 was scared.

6 Q. I see. Okay. And you testified that I
7 think you've figured out you interviewed Mr.
8 Rodriguez about five times?

9 A. I think so.

10 Q. And so just to make sure that the answer
11 stays the same from yesterday -- because I think we
12 talked about two or three times -- never did Mr.
13 Rodriguez waver from the statement he made to you
14 about Mr. Perez being in fear?

15 A. No, he never brought that up to me.

16 Q. Now, about this burden that Mr. Rodriguez,
17 it was lifted from him, is the way you described it.
18 Before he agreed to work for the Government, he was
19 facing a life sentence, wasn't he?

20 A. I believe so.

21 Q. And after he agreed to work for the
22 Government, he entered into a plea agreement which
23 he wouldn't have to face that life sentence if the
24 Government files a motion?

25 A. I believe so.

1 Q. That's a pretty big burden to be lifted
2 from, isn't it?

3 A. Yes.

4 Q. You testified on cross-examination about
5 some -- about your notes?

6 A. Yes.

7 Q. Are those your handwritten notes from your
8 interviews with Mr. Rodriguez?

9 A. Yes.

10 Q. Do those notes still exist?

11 A. Yes.

12 Q. And have those notes been provided to the
13 United States?

14 A. Yes.

15 Q. Do you know if those notes have ever been
16 provided to the defense?

17 A. I don't know.

18 Q. Would it surprise you to learn that they
19 have not?

20 A. I guess not.

21 Q. That wouldn't surprise you?

22 A. I don't know what they turn over and
23 what --

24 MR. CASTELLANO: Don't testify.

25 THE COURT REPORTER: I'm sorry?

1 THE COURT: Well, don't testify. You can
2 ask her questions, and we'll deal with any discovery
3 issues later.

4 BY MR. VILLA:

5 Q. Okay. I just want to clarify your
6 testimony. Would it surprise you to learn that the
7 defense has not received your notes?

8 A. No, I don't know what they disclose and
9 what they don't.

10 Q. Okay. And understanding that you didn't
11 look through Mr. Rodriguez' box in which you
12 discovered Exhibit FV until this weekend, that box
13 was in the possession of the FBI since at least last
14 summer?

15 A. Correct.

16 Q. And according to Exhibit FV -- and if you
17 need to see it again, we'll pull it up -- Mr.
18 Rodriguez was saying he was going to testify to
19 those things under oath?

20 A. That's my understanding.

21 Q. And that's what he wrote in the letter?

22 A. Yes.

23 Q. And I think you testified that you knew at
24 that time, October 2014, the date of the letter, the
25 state proceedings were still underway?

1 A. I believe so.

2 Q. And so Mr. Rodriguez says in this letter
3 that he would testify under oath, referring to the
4 state proceedings?

5 A. Yes.

6 Q. Now, you testified about how Mr. Rodriguez
7 told you about his assault on Mr. Esparza for the
8 drug debt?

9 A. Yes.

10 Q. And how he told you about his role in the
11 Sosoya assault?

12 A. He did.

13 Q. And how he had prepared weapons for the
14 Javier Molina assault?

15 A. Yes.

16 Q. And his role in the Javier Molina assault?

17 A. Yes.

18 Q. When he was telling you about these
19 assaults that he did or that he played a role in,
20 was he excited about it?

21 A. No.

22 Q. Did he ever take -- did he ever apologize
23 for what he did to these men?

24 A. I don't think he did in front of me.

25 Q. Did you ever make a determination for

1 yourself that he wouldn't commit acts of violence
2 like he did against these three men ever again?

3 A. No, I wouldn't say that.

4 Q. You can't be sure, can you?

5 A. I can't, no.

6 Q. You were asked by Mr. Castellano if you
7 learned or if Mr. Rodriguez testified about where
8 Mr. Perez' cell was in relationship to the inner pod
9 door where this alleged paperwork was passed?

10 A. Yes.

11 Q. But Mr. Rodriguez never told you that Mr.
12 Perez saw anything like that happen, did he?

13 A. No, he didn't.

14 Q. And you don't have any information from
15 Mr. Rodriguez that he told Mr. Perez anything at all
16 about paperwork?

17 A. No.

18 Q. Or that Mr. Perez even knew who the target
19 of the piece that was taken from his walker actually
20 was, at the time the piece was taken?

21 A. Correct.

22 MR. VILLA: May I have a moment?

23 THE COURT: You may.

24 MR. VILLA: No further questions.

25 THE COURT: Ms. Jacks, do you have

1 redirect of Ms. Stemo?

2 MS. JACKS: I do, Your Honor.

3 THE COURT: Ms. Jacks.

4 REDIRECT EXAMINATION

5 BY MS. JACKS:

6 Q. Good morning again, Ms. Stemo.

7 A. Good morning.

8 Q. I just have a few topics I want to cover
9 with you based on Mr. Castellano's questions. And
10 I'm probably going to go basically in the order that
11 he went.

12 A. Okay.

13 Q. Mr. Castellano asked you some questions
14 about Mario Rodriguez crying and becoming emotional.
15 Do you recall that?

16 A. Yes.

17 Q. Would you agree with me that just because
18 someone cries or becomes emotional, that doesn't
19 mean that they're telling the truth, does it?

20 A. Not necessarily.

21 Q. Okay. So people can cry and be emotional
22 and still lie?

23 A. I suppose so.

24 Q. And you're aware, aren't you, that Mr.
25 Rodriguez was convicted of an offense that requires

1 him to register as a sex offender, if and when he's
2 released from prison?

3 MR. CASTELLANO: Objection, beyond the
4 scope.

5 MS. JACKS: This goes to his state of mind
6 and why he might be emotional, Your Honor.

7 THE COURT: Overruled.

8 A. Yes.

9 Q. And in your conversations -- well, not
10 only -- you didn't just talk with Mr. Rodriguez, did
11 you? I mean, you also performed some sort of
12 background investigation regarding him, didn't you?

13 A. Yes.

14 Q. Okay. And in dealing with Mr. Rodriguez,
15 both in your conversations with him and in what you
16 discovered in looking at his background and his
17 history, did you become aware that this fact that he
18 had to register as a sex offender was something that
19 was very disturbing and upsetting to Mr. Rodriguez?

20 A. I don't think I discussed that incident
21 with him, so I don't know if he was disturbed or not
22 when he discussed it with other agents.

23 Q. Okay. Did he ever, in your presence,
24 discuss the fact that that was something that was of
25 concern to him, this fact that he had to register?

1 A. I don't think we discussed that.

2 Q. Okay. And did you ever look at the
3 multiple petitions for writs of habeas corpus he
4 filed in regard to that sex conviction to try to
5 invalidate the conviction so he didn't have to
6 register?

7 A. I didn't see those.

8 Q. You're not aware of those?

9 A. No.

10 Q. Okay. During any of your interactions
11 with Mr. Rodriguez did you hear Agent Acee discuss
12 with him that one result of his becoming a
13 Government witness could be that he'd get a new
14 identity with a new criminal record?

15 A. I don't think I was at that initial
16 meeting.

17 Q. Can we have Exhibit F, as in Frank, V as
18 in Victor. Ms. Stemo, this is the letter that you
19 were asked some questions about yesterday?

20 A. Yes.

21 Q. And this is the letter that you actually
22 brought to the attention of the Government on
23 Sunday?

24 A. I believe it was Agent Sainato that did.
25 I brought it to his attention.

1 Q. Okay. You found the letter and brought it
2 to Sainato's attention, because he had actually been
3 in possession of it; is that right?

4 A. Yes.

5 Q. And Sainato had been in possession of this
6 letter since July, June or July of 2017?

7 A. I was just told summer of 2017.

8 Q. You don't know exactly when?

9 A. No.

10 Q. But the FBI -- somebody at the FBI had
11 possession of this letter prior to any of your
12 interviews with Mario Rodriguez, right?

13 A. Correct.

14 Q. And during your five or so interviews with
15 Mr. Rodriguez, was he ever confronted with this
16 letter and asked about it?

17 A. No. We didn't find it until after.

18 Q. Well, somebody had it, right? FBI Agent
19 Sainato had it?

20 A. Correct.

21 Q. But he didn't make you aware of it
22 until -- well, he never made you aware of it?

23 A. Correct.

24 Q. Just sort of by happenstance, you ran
25 across it?

1 A. Yes.

2 Q. So I guess my question -- I want to go
3 back. During your interviews with Mr. Rodriguez,
4 was he ever confronted with the statements in this
5 letter?

6 A. No.

7 Q. Was he ever asked whether he wrote this
8 letter in preparation to lie on the witness stand?

9 A. No.

10 Q. And are you aware -- were you present here
11 in court the days that Mr. Rodriguez testified
12 before this jury?

13 A. I haven't been in the courtroom, as a
14 witness.

15 Q. That's right. That's right. So -- and
16 you haven't been reading the transcripts of Mr.
17 Rodriguez' testimony?

18 A. No.

19 Q. Do you know whether he was asked during
20 this trial whether he participated, along with Jerry
21 Armenta and Jerry Montoya and Timothy Martinez, in
22 making up a story about the Molina murder so that
23 they could get out of or reduce their criminal
24 liability in the state case?

25 A. I could assume they were, but I don't know

1 that for a fact.

2 Q. Do you know whether Mr. Rodriguez admitted
3 doing that on the witness stand that you're sitting
4 in right now?

5 MR. CASTELLANO: Objection, calls for
6 speculation.

7 THE COURT: Well, it's a yes/no question.
8 If she doesn't know, she can say she doesn't know.

9 A. I don't know that.

10 Q. Okay. Can we have Exhibit 757, please.
11 Agent Stemo, have you seen this letter before? And
12 if you need me to make any part of it bigger. This
13 is a letter that Jerry Armenta wrote to Jerry
14 Montoya, that was intercepted at the prison while
15 the state case was pending. Have you ever seen that
16 letter before?

17 A. No.

18 Q. Okay. Mr. Castellano asked you some
19 questions about -- let me go back for a second. Do
20 you know that this letter was produced as part of
21 the discovery in this case?

22 A. I don't know that.

23 Q. Do you recall the questions that Mr.
24 Castellano asked you about Mr. Rodriguez telling you
25 during a debrief that when he tried to hand the

1 shank to Jerry Montoya, that Mr. Montoya raised his
2 hands?

3 A. Yes.

4 Q. I want to direct you to a portion of this
5 letter. Can we make it bigger? I mean smaller.
6 Let's go just for the top third of the letter and
7 enlarge it.

8 Do you see three lines down, the sentence
9 starting "But"? "But I had to tell the truth about
10 how it all went down, from you picking up your hands
11 when Blue handed you your piece to the threats of
12 your life."

13 Do you see that?

14 A. I do.

15 Q. Would you agree with me that the person
16 who wrote this letter wrote that Jerry Montoya had
17 to pick up or picked up his hands when Blue handed
18 him the shank?

19 A. Yes.

20 Q. And are you aware that Mr. Armenta
21 testified about this letter, that he wrote this
22 letter at least in part to try to communicate pieces
23 of his story to Jerry Montoya?

24 A. I don't know that.

25 Q. Okay. And can we enlarge -- I mean, make

1 the letter smaller? Do you see that Bates stamp on
2 the bottom, U.S. versus DeLeon, et al., 2350?

3 A. Yes.

4 Q. Is that how materials that are disclosed
5 in discovery in this particular case are designated
6 by the Government?

7 A. Yes.

8 Q. And so that means that it's page 2350 of
9 the discovery in this case?

10 A. Correct.

11 Q. And the discovery in this case has been
12 provided to Mr. Rodriguez on a computer tablet,
13 correct?

14 A. Yes.

15 Q. And he's had the ability to read and to
16 have it in his cell for as much time as he wants
17 while the case has been pending?

18 A. I don't know about the length of time
19 they're allowed to have it, but they are given
20 access to it.

21 Q. To the discovery on the tablet?

22 A. Yes.

23 Q. Now, Mr. Castellano asked you some
24 questions about the handwritten notes that Mr.
25 Rodriguez prepared for your meeting on November 1st,

1 2017. Do you recall those questions?

2 A. Yes.

3 Q. And did Mr. Rodriguez prepare those notes
4 prior to meeting with you and Agent Acee?

5 A. Yes.

6 Q. And during the course of your interview,
7 did you read those notes and ask him about them?

8 A. I don't think I read them during the
9 interview.

10 Q. After the interview, did you read them?

11 A. Yes.

12 Q. And if you need to see the notes, let me
13 know. But my question to you is the same about the
14 questions with respect to the 302 reports of your
15 interviews with Mario Rodriguez. In those notes,
16 did Mr. Rodriguez say anything about exchanging
17 notes with Lupe Urquizo on March 6, 2014, in the
18 afternoon?

19 A. Not that I remember. I'd have to read the
20 notes.

21 Q. Okay. Do you want me to get -- I want you
22 to be accurate, so I'll bring them up.

23 MS. JACKS: Your Honor, I have Bates pages
24 51522 to 51531. May I approach the witness and show
25 them to her?

1 THE COURT: You may.

2 BY MS. JACKS:

3 Q. And there are some markings on here, Agent
4 Stemo. Those are mine, so I would just ask you to
5 ignore them. Just let me know when you're done.

6 A. Thank you. I'm finished.

7 Q. Thank you, Agent Stemo. I appreciate you
8 taking your time doing that. After you've had a
9 chance to review those notes, can you answer the
10 question? And the question was whether in those
11 notes Mr. Rodriguez said anything about exchanging
12 notes with Lupe Urquizo or showing notes to Lupe
13 Urquizo on the afternoon of March 6, 2014.

14 A. He did not.

15 Q. Now, Mr. Castellano asked you some
16 questions about whether it's possible to get --
17 basically, to download everything from a person's
18 brain in a debrief, and I think you said that you
19 can't do that; you can't find out everything a
20 person knows in a few hours' time?

21 A. Correct.

22 Q. Right? But would you agree with me that
23 when you're investigating a case and you're
24 interviewing a witness about a particular incident,
25 that one of the reasons that you make a report of

1 what was said during that interview is so that you
2 can track over time whether the witness is
3 consistent about the things that he's telling you
4 about, or whether his story changes over time?

5 A. Yes.

6 Q. So you would agree that you try to be as
7 thorough as possible and ask the witness -- in this
8 particular instance, Mr. Rodriguez -- everything you
9 can think of regarding the crime that you're
10 investigating?

11 A. Yes.

12 Q. And then try to document that as
13 accurately as possible?

14 A. Correct.

15 Q. And when you ask a witness questions in a
16 formal FBI interview, do you ask leading questions,
17 or do you ask open-ended questions that invite the
18 witness to remember things and tell you things that
19 you maybe don't already know?

20 A. We try to ask open-ended questions.

21 Q. To sort of download as much information as
22 you can from the witness?

23 A. Yes.

24 Q. And then do you also try to ask the
25 witness questions about things you already know the

1 answers to, maybe, to ascertain whether he's telling
2 the truth?

3 A. Yes.

4 Q. So prior to this trial, in total how many
5 hours do you think the FBI, yourself and other
6 agents included, spent downloading or debriefing Mr.
7 Rodriguez about what he says happened around the
8 time of the Molina homicide?

9 A. Ballpark, around 10 or 15.

10 Q. And were the interviews -- were any of the
11 interviews cut short because of some sort of
12 emergency or some sort of reason that you didn't
13 anticipate?

14 A. No. I'd say we had to return him to his
15 facility.

16 Q. At night, he would have to go back to
17 jail?

18 A. Yes.

19 Q. And you could then have him come back the
20 next day, right?

21 A. Sometimes.

22 Q. Or you could go out to the jail, like you
23 did at least once, to talk to him, right?

24 A. Yes.

25 Q. And in your experience, do you think that

1 human memory gets better with time, or does it tend
2 to fade with time?

3 A. I think it depends on the person.

4 Q. In preparing -- well, let's go back. The
5 other thing that we talked about or you were asked a
6 little bit about yesterday is about how you're
7 trained in the FBI Academy to prepare reports and to
8 be as thorough as possible?

9 A. Yes.

10 Q. And is the idea that when you're preparing
11 the report, you want to document every fact of
12 significance that a witness has told you, so that
13 you have a record of that?

14 A. Yes.

15 Q. And so that you have in your hands
16 evidence that you could use to rebut the charge that
17 somebody has made something up?

18 A. Correct.

19 Q. Or also to rebut the charge that somebody
20 has talked to somebody else and now is including
21 what that other person says as part of what they
22 claim to remember?

23 A. Yes.

24 Q. Now, specifically in connection with the
25 events that Mr. Rodriguez told you or that he said

1 supposedly happened around the time of the Molina
2 murder, did you make efforts to corroborate that by
3 comparing his story to things that you knew to be
4 true?

5 A. Yes.

6 Q. What did you -- well, let me ask you this:
7 Did you compare what Mr. Rodriguez told you about
8 the events of March 6th and 7th, 2014, with
9 transportation records from the Department of
10 Corrections?

11 A. I personally did not.

12 Q. Did you compare what he told you about the
13 events of March 6th and 7th, 2014, with housing
14 records from the Southern New Mexico Correctional
15 Facility?

16 A. I personally did not.

17 Q. Did you compare what he told you about the
18 events of March 6th and 7th, 2014, with logs from
19 the correctional officers that were staffing that
20 Unit 1-A at the Southern New Mexico Correctional
21 Facility?

22 A. I did not.

23 Q. And Mr. Castellano asked you some
24 questions about the story that Mr. Rodriguez told
25 you about the passing of this paperwork from a guy

1 named Cheech to David Calbert?

2 A. Yes.

3 Q. Do you recall those questions?

4 A. I do.

5 Q. And Cheech -- do you know Cheech to be an
6 individual by the name of Joe Martinez?

7 A. Yes.

8 Q. And Joe Martinez is somebody that's been
9 in and out of New Mexico correctional institutions
10 for a long time, right?

11 A. Yes.

12 Q. Did you -- well, let me ask you this: Do
13 you know whether Joe Martinez, Cheech, was in
14 custody between April 11, 2013, and February 10th of
15 2016?

16 A. I don't know that.

17 Q. You have seen offender physical location
18 histories prepared by the New Mexico Department of
19 Corrections, right?

20 A. Yes.

21 Q. And if I showed you -- do you know how to
22 read them?

23 A. Yes.

24 Q. It took me a while. So if I showed you
25 the offender physical location history for Joe

1 Patrick Martinez, might that enable you to refresh
2 your memory and answer the question as to whether he
3 was in custody on those dates?

4 A. Yes.

5 Q. Okay.

6 MS. JACKS: May I approach, Your Honor?

7 THE COURT: You may.

8 Q. I have an exhibit that has been previously
9 marked as Defendants' Exhibit V-16, V as in Victor.

10 Agent Stemo, I'm handing you the whole
11 exhibit, but I think that the time period I asked
12 for is reflected on the first page. And
13 specifically what I'm asking -- I'll break down the
14 question.

15 These are the housing records for Cheech,
16 right?

17 A. Yes.

18 Q. And can you look at the date April 11,
19 2013?

20 A. That date's not on there.

21 Q. Oh, I thought it was. 4/11?

22 A. 4?

23 Q. No, 4/11/2013.

24 A. No, it says April 4, 2013.

25 MS. JACKS: May I approach?

1 THE COURT: You may.

2 A. Oh, I see it now.

3 Q. Okay. So do you see that on April 11,
4 2013, it looks like Mr. Martinez was in custody,
5 right?

6 A. Yes.

7 Q. And housed at the North facility?

8 A. Yes.

9 Q. And then what's the next date on the
10 housing record?

11 A. February 10th, 2016.

12 Q. And there, he's in some sort of intake?

13 A. Correct.

14 Q. So between April 11, 2013, and February
15 10th, 2016, according to those records was Mr.
16 Martinez in the New Mexico Department of
17 Corrections?

18 A. I don't think so.

19 Q. Can we have a -- there's some doubt, so I
20 just want to make --

21 A. I'm not an expert on location histories.

22 Q. But looking at that history, he's not
23 housed, according to that, within the New Mexico
24 Department of Corrections?

25 A. Yeah, I don't think so.

1 Q. Okay. Thank you.

2 THE COURT: Ms. Jacks, would this be a
3 good point for us to take our morning break?

4 MS. JACKS: Yes. And I can say I have
5 nothing further.

6 THE COURT: Thank you, Ms. Jacks.

7 All right. We'll be in recess for about
8 15 minutes.

9 All rise.

10 (The jury left the courtroom.)

11 THE COURT: All right. We'll be in recess
12 for about 15 minutes.

13 (The Court stood in recess.)

14 THE COURT: All right. We'll go on the
15 record.

16 Ms. Fox-Young, do you want continue your
17 request for relief?

18 MS. FOX-YOUNG: Yes, Your Honor.

19 THE COURT: Ms. Fox-Young.

20 MS. FOX-YOUNG: Your Honor, I'd just like
21 to start with a document that was produced to me
22 about 30 seconds ago, which I have not yet had time
23 to review. But I'd like to mark it as the next
24 Court's exhibit. Our exhibit. I'm sorry. I don't
25 get to decide what the Court's exhibits are.

1 FX. And it purports to be Agent Stemo's
2 notes, I think from October 24, 2017, of her
3 interview with Mario Rodriguez. Mr. Castellano used
4 those notes in cross-examination of Agent Stemo. I
5 don't have the transcript in front of me, but he
6 asked her specifically -- and, Your Honor, I'd just
7 ask that the witness not be present for this
8 argument.

9 THE COURT: All right. Why don't you step
10 out, Ms. Stemo.

11 MS. FOX-YOUNG: Thank you, Your Honor.

12 THE COURT: Ms. Fox-Young.

13 MS. FOX-YOUNG: And asked her specifically
14 whether she had included anything in her notes about
15 Mr. Perez' affect, as told to her by Mr. Rodriguez,
16 other than that Mr. Perez looked scared. He may
17 have asked a couple of other questions about the
18 notes.

19 Of course, we didn't have the notes in
20 order to use on redirect. I immediately emailed the
21 Government and asked them for the notes. I think
22 we're entitled to the notes, as they're using them
23 in their case.

24 And this Court will recall prior rulings
25 to preserve and review and subsequently produce law

1 enforcement notes for any of the CHS law enforcement
2 handlers within 14 days. I think that came out of
3 the May 9th to 10th, 2017, hearings. And that was
4 the transcript from May 10th, 2017, page 4, lines 17
5 to 20; and page 5, line 25 to page 6, lines 1 to 2.

6 And in addition, Agent Stemo, although we
7 called her in our case, is the Government's agent.
8 We're entitled to Jencks on her.

9 And so I now have maybe a dozen
10 handwritten pages of notes that I haven't had a
11 chance to review. I'm not sure how we'll be able to
12 use them at this moment, but we'd certainly ask that
13 we have the opportunity to use them with Agent
14 Stemo. I think that's a clear violation of the
15 Court's multiple orders on production of Jencks,
16 production of notes of law enforcement handlers
17 within 14 days after review.

18 And with that, I'll just return to the
19 question of the box of documents that were
20 purportedly from Mario Rodriguez, which we still
21 have not received as of the present moment. And
22 where I left off this morning, Your Honor, I was
23 also going to ask that the Court order the
24 Government to produce any and all FBI or New Mexico
25 Corrections Department reports documenting the

1 transfer of those records. There have been
2 thousands of documents in this case, but I don't
3 think that we have received them. In addition, any
4 other documents under Agent Sainato's desk or any
5 other FBI agent's desk in their offices that are
6 relevant with these witnesses.

7 THE COURT: All right. Well, let me
8 consider your request.

9 All rise.

10 (The jury entered the courtroom.)

11 THE COURT: All right. Everyone be
12 seated.

13 All right, Ms. Stemo, if you'll return to
14 the witness stand, and I'll remind you that you're
15 still under oath.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. Do any of the
18 other defendants have redirect examination that they
19 wish to conduct of Ms. Stemo?

20 Mr. Lowry.

21 MR. LOWRY: Your Honor, may I approach?

22 THE COURT: You may.

23 (The following proceedings were held at
24 the bench.)

25 MR. LOWRY: Your Honor, I want to renew my

1 objection I made earlier. We went through the Mario
2 Rodriguez testimony that he gave on February 7th,
3 and the problem is, Mr. Rodriguez never made any
4 kind of comment about Mr. Baca wanting to kill rats.
5 So this idea that the United States needed to
6 bolster or, you know, come back and vouch for the
7 credibility of this witness, whose credibility was
8 never under attack by Mr. Baca, doesn't qualify for
9 the hearsay exception or even the use of these
10 statements.

11 So at this time, we're going to have to
12 move to strike all of that testimony.

13 THE COURT: Well, find it in the record
14 and let me see, and then give the Government an
15 opportunity to show me anything that is
16 inconsistent, that they're trying to impeach. It's
17 a little hard for me to remember what I heard on
18 February 7th.

19 MR. LOWRY: Understood, Your Honor. And
20 we dutifully did that, and my position is there is
21 nothing in the record.

22 THE COURT: I understand your position,
23 but he's testified something here you need me to
24 strike, and you need to find that. The Government
25 needs to show me what it is.

1 MR. LOWRY: I can do that, Your Honor.
2 There was a series of questions where Mr. Castellano
3 asked --

4 THE COURT: Tell me where in the record it
5 is.

6 MR. LOWRY: Oh, gosh. On this, I don't
7 have the time signatures. On ours, we only have
8 page breaks.

9 THE COURT: Ms. Bean, we need to have
10 consistent real-time between the Court and the
11 lawyers that I've got, page numbers, and they don't
12 have the time, and I do. So we need to have the
13 same real-time advantages the Court does, that the
14 parties do. So let's make sure that gets done.

15 MR. LOWRY: I apologize, Your Honor. Can
16 I give you -- the statement was, Mr. Castellano
17 asked a question, did he provide information about
18 Baca's feelings about rats. And the answer was
19 "Yes." And then there was a follow-up question
20 which I thought was a "Yes" or "No" question, "What
21 should be done with them," meaning what should be
22 done with rats. And rather than respond "Yes" or
23 "No," Ms. Stemo said, "They should be killed."

24 Now, as far as we can tell, everyone in
25 the jury box took notes about that specific answer,

1 and I don't think the answer was responsive.

2 THE COURT: What do you want me to do?

3 MR. LOWRY: I would like the jury to be
4 instructed that all of that testimony --

5 THE COURT: When you say "all of that
6 testimony," tell me what you want to say.

7 MR. LOWRY: I would like the jury to be
8 instructed that Ms. Stemo's testimony, any testimony
9 she provided regarding Mr. Baca be disregarded as to
10 Mr. Baca. I don't want to highlight that specific
11 statement, but I want the jury to know that any
12 statement she made regarding Mr. Baca should be
13 completely disregarded and not be used in their
14 consideration of this case, and that any notes that
15 they made should be stricken.

16 THE COURT: Do you have any -- Mr.
17 Castellano, do you have any statements that you feel
18 that you were trying to get Ms. Stemo to make a
19 prior consistent statement, and can you link it with
20 the February 7th testimony?

21 MR. CASTELLANO: I can't specifically link
22 it with that testimony. I remembered him discussing
23 the rayos and the organization of the SNM. I
24 thought it was in there, but I cannot pinpoint for
25 the Court.

1 THE COURT: Do you have any objection to
2 me making this instruction, then?

3 MR. CASTELLANO: No, because that would be
4 a "Yes" or "No" answer by providing information
5 about what he thinks.

6 THE COURT: Well, why don't I give this
7 answer -- or give this instruction to the jury,
8 then.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. As far as Ms.
12 Stemo's testimony as to Mr. Baca, anything that she
13 said as to Mr. Baca should be disregarded. And if
14 you took notes and you put that in there, go right
15 now and strike it out as to Mr. Baca. So remove
16 that, and her testimony as to Mr. Baca will be
17 stricken.

18 All right. Mr. Lowry, did you have any
19 redirect of Ms. Stemo?

20 MR. LOWRY: No, Your Honor.

21 THE COURT: Mr. Maynard? Ms. Bhalla?

22 MS. BHALLA: No, Your Honor.

23 MR. MAYNARD: No, Your Honor.

24 THE COURT: All right. Ms. Stemo, you may
25 step down.

1 Do you have something further, Mr.
2 Castellano?

3 MR. CASTELLANO: Yes, Your Honor, based
4 off the redirect.

5 THE COURT: All right.

6 FURTHER REDIRECT EXAMINATION
7 BY MR. CASTELLANO:

8 Q. Okay. When you were referring to Mr.
9 Rodriguez, once he made the decision to cooperate
10 and you said he cried or had tears in his eyes, was
11 that October 24th of 2017?

12 A. It was.

13 Q. And had he even pled guilty at that point?

14 A. He had not.

15 Q. So he pled guilty on November 1st, 2017,
16 correct?

17 A. I believe so.

18 Q. So the idea of him not getting a life
19 sentence and things of that nature, he hadn't even
20 pled guilty yet, correct?

21 A. Correct.

22 Q. Now, if we can have -- oh, you were also
23 asked by Mr. Perez' attorney about not knowing what
24 was said to Mr. Perez. Do you remember that?

25 A. Yes.

1 Q. And isn't it true that Mr. Rodriguez,
2 well, told you he didn't say anything to Mr. Perez?

3 A. I believe so.

4 Q. And to be more specific, when he took the
5 piece from the walker to make shanks?

6 A. Yes.

7 Q. And so if Mr. Rodriguez didn't say
8 anything, then it must have been someone else who
9 said something; isn't that true?

10 A. Yes.

11 Q. Okay. I'm going to show you Government's
12 Exhibit 757. Okay. So are you aware that this is a
13 letter that was supposed to be -- that was written
14 from Jerry Armenta and it was meant for Jerry
15 Montoya? Do you know that?

16 A. I did not until this morning.

17 Q. And are you aware that this never even
18 reached Jerry Montoya and that it was intercepted?

19 A. I don't know that.

20 Q. Now, in the area where it says, "It all
21 went down, from you picking up your hands," do you
22 see that part?

23 A. I do.

24 Q. So that is Jerry Armenta referring to
25 Jerry Montoya picking up his hands?

1 A. Yes.

2 Q. And is that consistent with what Mr.
3 Rodriguez told you happened when he met with Mr.
4 Montoya to give him his shank?

5 A. Yes.

6 Q. Now, you were asked about corroboration
7 and records and things of that nature. Do you
8 remember that?

9 A. Yes.

10 Q. And in addition to records and things of
11 that nature, can you also compare people's
12 statements to each other, to see if they make sense?

13 A. Yes.

14 Q. And so as part of your process, did you
15 also basically test statements against each other,
16 to see if they made sense?

17 A. Yes.

18 Q. Are you aware of a phone conversation
19 between Mr. Baca and the person known as Cheech, a
20 telephone conversation?

21 MR. LOWRY: Objection, Your Honor, outside
22 the scope.

23 THE COURT: Well, let me just see. This
24 is a yes/no answer. Let's see if she knows about it
25 first.

1 A. Yes.

2 Q. And in terms of things by which you can
3 corroborate things, I won't ask you about the
4 contents of that now, but is there a conversation
5 between Mr. Baca and the person known as Cheech
6 which helps corroborate some of this information in
7 this case?

8 MR. LOWRY: Objection, Your Honor. It's
9 still beyond the scope.

10 A. And I would --

11 THE COURT: Well, tell me where it linked
12 up in the scope of the redirect.

13 MR. CASTELLANO: Ms. Jacks asked about can
14 you compare records, can you look for people going
15 in and out of custody, and things of that nature,
16 and she even showed Agent Stemo a location history.
17 So the question is: Are there other things you can
18 use to compare or corroborate other information?

19 THE COURT: Well, I think you can ask
20 general questions without being specific, so keep it
21 at a general level.

22 MR. CASTELLANO: Like I said, I'm not
23 asking for the contents.

24 THE COURT: I know, but keep it general
25 rather than going into specific things.

1 MS. JACKS: Your Honor, if I may, I also
2 object, and I think that the question requires
3 reliance on hearsay in order to provide the answer.

4 THE COURT: Well, let's see what the
5 question is. I've sustained the objection to this
6 question. I don't need more objections to it.
7 Let's see what the new question is.

8 BY MR. CASTELLANO:

9 Q. Are you aware of a phone conversation
10 between Mr. Baca --

11 THE COURT: No, that's not consistent with
12 my -- you're not going to ask that question.

13 MR. CASTELLANO: I wasn't asking for the
14 contents, Your Honor.

15 THE COURT: I said keep it general, don't
16 go specific.

17 BY MR. CASTELLANO:

18 Q. Are you aware of other information which
19 tends to corroborate some of the information we have
20 in this case?

21 A. Yes.

22 Q. Without telling us anything else, are you
23 aware of phone calls which also do that?

24 A. Yes.

25 Q. Showing you Defendants' Exhibit FV,

1 Foxtrot-Victor, okay, so you've seen this exhibit
2 now, which is a letter written by Mario Rodriguez,
3 correct?

4 A. Yes.

5 Q. And, once again, purportedly written in
6 2014?

7 A. Yes.

8 Q. And are you aware of the letter written by
9 Jerry Armenta to Jerry Montoya's attorney?

10 A. Yes. The one you just showed?

11 Q. Yes.

12 A. Yes.

13 Q. So once this case became a federal case,
14 did you see defendants trying to write letters like
15 this, in which they basically tried to take the rap
16 for somebody else?

17 A. I don't --

18 MS. JACKS: Objection, compound.

19 THE COURT: Overruled.

20 A. Not that I recall.

21 Q. So in other words, have you seen a letter
22 like this from Mario Rodriguez after this became a
23 federal case?

24 A. No.

25 Q. Or Jerry Armenta?

1 A. No.

2 Q. Or Jerry Montoya?

3 A. No.

4 Q. So did you only see this when this was a
5 state case that was pending?

6 A. Yes.

7 MR. CASTELLANO: I pass the witness, Your
8 Honor.

9 THE COURT: Thank you, Mr. Castellano.

10 Mr. Villa, do you have re-redirect?

11 MR. VILLA: Just briefly, Your Honor.

12 THE COURT: Okay.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. VILLA:

15 Q. Agent Stemo, in terms of what took place
16 when Mario Rodriguez was in Rudy Perez' cell, you
17 testified that Mario Rodriguez said to you that he
18 didn't say anything to Mr. Perez?

19 A. Yes.

20 Q. So you're assuming that that's true?

21 A. Yes.

22 Q. And that basically everything, what Mario
23 Rodriguez told you was not only true, but that he
24 told you every single detail?

25 A. No, I don't assume that.

1 Q. Well, in fact, you didn't get every single
2 detail from Mario Rodriguez, did you?

3 A. No.

4 Q. You do agree, though, that if Mr. Perez
5 had said anything at that time, you know, as Mario
6 Rodriguez is doing what he's doing, taking the piece
7 off the walker and alerting the COs, that sort of
8 thing, that could label Mr. Perez as a rat?

9 A. It could.

10 Q. And Mario Rodriguez told you, did he not,
11 that anybody can sanction a rat?

12 A. Yes.

13 MR. VILLA: May I have just a moment?

14 THE COURT: You may.

15 MR. VILLA: That's all, Your Honor.

16 THE COURT: All right. Thank you, Mr.
17 Villa.

18 Anyone else?

19 MS. JACKS: No, Your Honor. I have
20 nothing further.

21 THE COURT: All right. Any other
22 defendants have anything further of Ms. Stemo? All
23 right. Ms. Stemo, you may step down. Is there any
24 reason Ms. Stemo cannot be excused from the
25 proceedings?

1 MS. JACKS: No, Your Honor. Thank you.

2 MR. VILLA: Your Honor, based on the issue
3 of the notes, we're going to reserve her.

4 THE COURT: All right. You're subject to
5 being re-called. You will need to stay outside of
6 the courtroom, but you are free to leave the
7 courthouse.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: All right. Thank you for your
10 testimony, Ms. Stemo.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: All right. Do the defendants
2 have their next witness or evidence?

3 MS. FOX-YOUNG: Yes, Your Honor, Mr. Perez
4 calls Dr. Heather Brislen.

5 THE COURT: Dr. Brislen, if you'll come up
6 and stand next to the witness box, before you're
7 seated, Ms. Standridge will swear you in.

8 HEATHER BRISLEN, M.D.,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 THE CLERK: State and spell your name for
12 the record.

13 THE WITNESS: My name is Heather Brislen.
14 First name, H-E-A-T-H-E-R. Last name,
15 B-R-I-S-L-E-N.

16 THE COURT: Dr. Brislen, Ms. Fox-Young.

17 DIRECT EXAMINATION

18 BY MS. FOX-YOUNG:

19 Q. Good morning, Dr. Brislen. Are you a
20 medical doctor?

21 A. Yes, I am.

22 Q. Can you tell the jury about your training,
23 beginning with your training in college?

24 A. Sure.

25 Q. I'm sorry, your education in college.

1 A. Sure. I went to college at Beloit
2 College, which is a small school in Wisconsin. I
3 received a bachelor's degree in history. I then
4 returned to New Mexico -- this is my home -- and I
5 went to medical school at the University of New
6 Mexico.

7 Q. And Dr. Brislen, I hate to interrupt you,
8 but maybe if you move the mic a little bit closer to
9 you to make sure everybody can hear.

10 A. Is that better? I went to medical school
11 at the University of New Mexico. At the end of that
12 time, I completed an internal medicine residency,
13 and I also did some public health training and
14 public health fellowship during that time when I was
15 a resident.

16 Q. And where was that fellowship?

17 A. It started at Oregon Health Sciences
18 University in Portland, and then I finished after I
19 returned to New Mexico.

20 Q. And going back to your college education,
21 did you graduate with any kind of distinction?

22 A. I did, I graduated summa cum laude, which
23 is high honors distinction.

24 Q. And what year, then, did you graduate from
25 UNM Medical School?

1 A. 2007.

2 Q. And while you were in medical school, at
3 some point did you start actually seeing patients in
4 clinic?

5 A. Yes. So traditionally in medical school,
6 you begin your clinical care in the third year of
7 medical school. So for me that was 2005.

8 Q. So you began seeing patients in 2005. Did
9 you continue seeing patients through the time of
10 your residency that you talked about?

11 A. Yes.

12 Q. And when did you finish your residency?

13 A. Actually, I'm sorry, during my public
14 health training I didn't see patients. So that's
15 about a year in there where I didn't see patients,
16 and then, I'm sorry, what was the question?

17 Q. When did you complete your residency?

18 A. I completed residency in 2011.

19 Q. Okay. So you saw patients for that
20 six-year interval with the exception of about a year
21 when you were doing the public health training?

22 A. Right.

23 Q. Okay. And where were you seeing patients
24 during that time?

25 A. Primarily at -- in clinical settings

1 affiliated with the medical school and the
2 residency, which means at University Hospital,
3 University Clinics in Albuquerque, and also at the
4 Albuquerque VA.

5 Q. And after you completed your residency,
6 what did you go do after that?

7 A. My first job after residency was as a
8 faculty member for the University. So I became -- I
9 was -- I'm sorry, that was at the Albuquerque VA.
10 So I was faculty at UNM, but I worked at the VA in
11 primary care and then in another group which is
12 called Clinical Informatics.

13 Q. And as a faculty member, were you teaching
14 medical students?

15 A. Yes, medical students and residents.

16 Q. And what subjects were you teaching them?

17 A. Internal medicine primarily. We did some
18 clinical informatics training as well, but my
19 appointment was in the department of internal
20 medicine to teach residents, mostly, how to become
21 internists during their residency.

22 Q. Okay. And you've mentioned clinical
23 informatics a couple of times. Can you tell the
24 jury what that means?

25 A. Clinical informatics is a new specialty

1 within medicine and it's about how health care
2 systems run. So how do we get our health care data
3 to work better, how do we get patients to move
4 through systems more efficiently, things like that.

5 Q. So am I correct in saying that you came on
6 as faculty in 2011?

7 A. Correct.

8 Q. Then how long did you continue as a
9 faculty member?

10 A. So I was a faculty member throughout my
11 entire time at the VA, which ended in -- my
12 full-time job at the VA ended in 2015. I'm still a
13 clinical faculty member is what it's called, because
14 I still teach at the VA. So even though I'm not
15 there full-time, I go back about once a month and
16 teach in the resident clinic.

17 Q. Okay. So you're still considered faculty
18 of the University of New Mexico Medical School?

19 A. That's right.

20 Q. And during that time, from 2011 up to
21 present, have you seen patients?

22 A. Yes, consistently the whole time.

23 Q. And can you tell the jury where you have
24 seen patients, in what capacity?

25 A. So when I was at the VA, I saw patients

1 both as an attending physician and as an independent
2 physician. Attending physician means you're seeing
3 them alongside residents. When you're a resident,
4 you're a licensed physician, but you have to have a
5 supervisor around, essentially. And then I have my
6 own clinic, so I have patients that recognize me as
7 their primary care physician.

8 And then in 2015, when I left the
9 full-time VA, I worked at Kaseman Hospital, which is
10 a Presbyterian rehab hospital in Albuquerque. I was
11 there for about a year and a half, and then I opened
12 my own primary care clinic, and I've been doing that
13 since September 2016.

14 Q. And I think you said that your residency
15 was in internal medicine?

16 A. Correct.

17 Q. Do you carry any licensures?

18 A. You mean like a state license? I'm
19 licensed to practice in New Mexico as a physician.
20 I'm board certified in internal medicine. So that's
21 my clinical specialty.

22 Q. And do you carry any other certifications?

23 A. I'm board certified in clinical
24 informatics, as well.

25 Q. Can you tell the jury to the best of your

1 ability and sort of in layman's terms, what is
2 internal medicine?

3 A. That's a good question. It's kind of a
4 funny name for a specialty. Internal medicine is a
5 generalist specialty for adults. So we do primary
6 care, which means really anything that might be new
7 to an adult that is a new health condition. Primary
8 care, which you're familiar with, is in clinic,
9 usually for outpatients.

10 Also within the specialties of internal
11 medicine is mostly hospital care, so adults that get
12 sick and go to the hospital. I do not do surgery
13 and I don't take care of people that are pregnant,
14 and I don't take care of children. Other than that,
15 I'm a generalist physician for adults.

16 Q. And do you carry any -- or have you
17 received any professional recognition or honors?

18 A. You'll see that my title is Heather
19 Brislen, M.D., FACP. FACP is Fellowship from the
20 American College of Physicians. The American
21 College of Physicians is a big national group of
22 internal medicine physicians. And when you are
23 awarded fellowship, it means your peers recognize
24 you as a leader in the field. I received that --
25 I'm actually not sure -- I think maybe 2015.

1 Q. Would it refresh your memory if I showed
2 you a copy of your CV?

3 A. Sure. Right. So that was January 2015.

4 Q. Thank you, Dr. Brislen. Have you received
5 any other professional recognitions or honors?

6 A. I'm sorry, is there something specifically
7 that you're interested in? I'm thinking, but --

8 Q. Well, I know you've been practicing for a
9 number of years. Would it refresh your memory if I
10 just showed you what you list on your CV?

11 A. Yes, I'm sorry.

12 So when I was a medical student in 2006
13 the American Medical Association Foundation awarded
14 me with an award called the Leadership in Medicine,
15 which is basically given to young physicians that
16 show promise in health policy and advocacy work.

17 And then additionally Albuquerque the
18 Magazine puts out a top docs issue from time to
19 time, and I've been in that three or four different
20 times as one of the recognized internists in
21 Albuquerque.

22 Q. And in the course of your work as faculty,
23 have you engaged in any scholarship or lectures?

24 A. Yes, especially when I was full-time
25 faculty, that's part of the expectation, that you do

1 both teaching work and also research work. So my
2 research and publications were primarily related to
3 the clinical informatics works, so we were learning
4 how to use the data in the VA's electronic medical
5 record to improve upon clinical systems and we
6 published a number of abstracts on that.

7 Additionally, I have a special interest in
8 physician supply issues: How do we train and make
9 sure that we have enough physicians to satisfy the
10 needs of a community, and why does primary care in
11 particular struggle with physician supply issues?
12 And so to that end I've given a number of lectures
13 and I've given those from time to time to different
14 residencies at UNM. And that has to do with, you
15 know, how the health system is structured. And
16 medical professionalism is another avenue that I've
17 been published in.

18 Q. And have your lectures -- and I'm not
19 talking about lectures to students and residents
20 that you described -- but your other scholarship and
21 lectures, have you covered in those lectures the
22 subject of internal medicine or subjects covered by
23 internal medicine?

24 A. Yes.

25 Q. And primary care?

1 A. Right.

2 Q. And Dr. Brislen, our court reporter is on
3 week five, and we don't want to wear her out. We've
4 got to get through this trial. If you can, just
5 speak slowly enough so that we can --

6 A. Okay.

7 Q. Thank you. Have you also produced any
8 manuscripts, abstracts, or other publications in
9 internal medicine?

10 A. Yes. In addition to the informatics that
11 I mentioned, there is an article about medical
12 professionals, some of which has to do with how we
13 train our medical students and teach them sort of
14 the ethical and moral standards of what we do.

15 And then I also -- one of my professional
16 activities was, I designed a primary care training
17 track for the internal medicine residency, and that
18 was published in actually one of the leading
19 academic medicine journals in the country, because
20 how to get internal medicine physicians incentivized
21 to do primary care is a really tough nut to crack.
22 People are struggling with figuring out how to do
23 that. So a summary of that educational program that
24 I designed was also published.

25 Q. Okay. And in the course of your clinical

1 work, extending back to 2005, do you see patients
2 with physical -- issues with their physical health
3 covered by internal medicine?

4 A. Yes, absolutely. Musculoskeletal health
5 is a big deal in primary care. Especially as our
6 bodies age, physical health is a big part of what we
7 manage.

8 Q. And you manage -- I know that internal
9 medicine is -- well, is internal medicine sort of a
10 large specialty covering a number of systems?

11 A. Yes, it is. I mean, when I meet my new
12 patients -- when new patients come to me in the
13 clinic, the way I describe what I do is three
14 facets. And one side of that is diagnosis and
15 treatment. Anything new. If something comes up,
16 what is it, how do we diagnose it, how do we treat
17 it, manage it?

18 Another piece is prevention, which is a
19 really big deal for adults; right? People in this
20 country, we've researched a lot, we know what we're
21 at risk for, how do we forecast what you might be at
22 risk for, and then what do we do to sort of minimize
23 that risk within a tolerance level?

24 And then chronic disease management is
25 another piece of that. A lot of the things that we

1 have to deal with are longitudinal. Like if
2 somebody gets a diagnosis of diabetes, that's
3 permanent. That's a diagnosis that will last their
4 entire life. So managing that over time is another
5 piece of my usual care.

6 Q. And so in terms of your usual care and in
7 managing patients, do you address all organ systems
8 of the body?

9 A. Yes.

10 Q. Okay. And in the course of your clinical
11 work, do you also treat patients for mental health
12 issues?

13 A. Yes, absolutely.

14 MS. FOX-YOUNG: Your Honor, I offer Dr.
15 Brislen as an expert in internal medicine.

16 THE COURT: Any objection, Mr. Beck, Ms.
17 Armijo?

18 MS. ARMIJO: No, not as to internal
19 medicine.

20 THE COURT: All right. So we'll allow Dr.
21 Brislen to offer opinion testimony in the area of
22 internal medicine, Ms. Fox-Young.

23 MS. FOX-YOUNG: Thank you, Your Honor.

24 BY MS. FOX-YOUNG:

25 Q. Dr. Brislen, you are a Court-appointed

1 expert in this case; is that right?

2 A. That's right.

3 Q. And as a Court-appointed expert, have you
4 reviewed any materials related to Mr. Rudy Perez?

5 A. Yes, I have. Starting as early as October
6 of 2016, I started reviewing his extensive medical
7 records which I'm estimating something in the nature
8 of 10,000 to 12,000 pages of medical records.

9 Q. Okay. So you started work around October
10 of 2016. So that's almost a year and a half ago?

11 A. Right.

12 Q. And you said you've reviewed over 10,000
13 pages of records?

14 A. I'm estimating based on the size of the
15 pile, and then comparing that to what I have
16 digitally, as well. I'm thinking it's 10,000 to
17 12,000 pages, though I haven't specifically counted
18 them.

19 Q. Are all of those records typewritten?

20 A. No. No, I would say at least a third of
21 them are handwritten.

22 Q. And I'm not asking you if you've read
23 every word on them, but you have reviewed in some
24 way records spanning back to what date?

25 A. The earliest records that I saw were 1992.

1 Q. And what is your hourly rate for your work
2 in this case?

3 A. My hourly rate is \$300 an hour.

4 Q. And is that a Court-approved rate?

5 A. Yes, it is.

6 Q. And you said you began work a year and a
7 half ago. Do you know how much you have billed for
8 your work to date?

9 A. So far, something around \$27,000.

10 Q. Okay. And I hear you say, "So far." Is
11 that because you're continuing to do work as we sit
12 in this trial?

13 A. That's right.

14 Q. And you have yet to bill for that work?

15 A. Right.

16 Q. Let me ask you: You have sat through some
17 of the testimony in this case, haven't you?

18 A. Yes.

19 Q. And you don't have any control over when
20 you go on the stand, do you?

21 A. No, I don't.

22 Q. Speaking just of the records, you said
23 maybe a third of them are handwritten. Do they
24 start in 1992 and continue to the present in
25 chronological order?

1 A. No, not at all. Medical records in any
2 system can be kind of messy and hard to tease apart.
3 These, in particular, were really difficult.
4 Because the patient moved around between several
5 different systems, each system that he would become
6 enrolled at would request some amount of former
7 medical records that may or may not be completely
8 incorporated. That means that there are lots of
9 holes and gaps and overlap and duplicates and
10 triplicates and other things in there as well. So
11 putting them in chronological order and establishing
12 a timeline of his conditions was a lot of what I
13 spent my time on.

14 Q. Okay. And did some of the records that
15 you reviewed -- were some of the records that you
16 reviewed produced by individuals in the prison
17 system?

18 A. That was my understanding. I received
19 everything through --

20 Q. Let me rephrase my question. I think I
21 wasn't clear.

22 A. Yeah.

23 Q. Do you believe some of those records
24 originated or were created in the prison system?

25 A. Yes, absolutely.

1 Q. And are those records -- can you say if
2 they're easier or harder to review and to make
3 conclusions from than other medical records that
4 you're used to looking at?

5 A. Because -- yes, they are. Most of the
6 medical records that I am exposed to in my usual
7 course of business or other expert witness work that
8 I've done have been typewritten and fairly organized
9 in terms of timeline. That was not the case for
10 most of these. Just in contrast, a large chunk of
11 the medical records for this case also came from the
12 University, and those were much easier to process
13 and sort of make sense of. The medical records from
14 the prison system were more difficult.

15 Q. Sounds like your review was pretty
16 time-consuming.

17 A. Yes, it was.

18 Q. Now, you have not ever physically examined
19 or even met with Mr. Rudy Perez, have you?

20 A. No.

21 Q. So you're not here as a treating provider
22 for Mr. Perez?

23 A. Correct. He's not my patient.

24 Q. And in the course of your work as a
25 Court-appointed expert in this case, did you have

1 occasion to meet with me or Mr. Villa?

2 A. Yes, we met a handful of times.

3 Q. Okay. Do you know how old Mr. Rudy Perez
4 is?

5 A. He is 49 or maybe 50 now.

6 Q. And going back, you've looked at records
7 from 1992 until what date?

8 A. I would say that my comprehensive review
9 ended in June of 2016.

10 Q. Okay. So looking at your review for that
11 24-year period -- is that a 24-year period? Sixteen
12 plus eight?

13 A. I'm going to trust your math. Yes, right.

14 Q. Looking at your review of records spanning
15 the time period from 1992 to 2016, can you tell me
16 whether Mr. Perez -- whether it's your opinion Mr.
17 Perez has sustained any traumatic injuries in that
18 time?

19 A. Yeah. That's one of the most remarkable
20 things about his health, is that Mr. Perez has a
21 series of traumatic events that have led to this
22 sort of cumulative burden of musculoskeletal health
23 issues that's really remarkable. Would you like me
24 to give some more detail about what those were?

25 Q. If you can tell the jury about what

1 musculoskeletal injuries and diagnoses he has, in
2 your opinion?

3 A. Okay. Sure. So starting in 1992 with the
4 early records, it was pretty clear that he'd already
5 had some substantial trauma, especially to his
6 chest, abdomen, and legs. And those were listed --
7 you know, in terms of talking about his medical
8 history, those were listed as being stabbing
9 injuries, gunshot wounds, and also trauma from
10 surgical repair to those areas.

11 Sorry, my microphone is ringing. I'm not
12 sure why it's doing that.

13 Q. Is it continuing to ring for you, Dr.
14 Brislen?

15 A. Yeah. I mean, it's okay. I wonder if
16 it's hard to hear on the other side. It's a little
17 distracting.

18 Okay. So even in 1992 it was very well
19 documented that he walks with a limp and he
20 struggles with falls, and that's thought to be
21 because of these injuries that he's had.

22 There is a gap in his medical records, and
23 I think that was because he wasn't incarcerated for
24 a number of years. And then in 2002 it picks up,
25 and he's having so much trouble with his

1 musculoskeletal health, in particular ambulation and
2 mobility issues, that he's enrolled in an intensive
3 physical therapy program which takes something more
4 than a year to complete.

5 Q. So he began an intensive physical therapy
6 program in 2002?

7 A. 2003 I think is when it started. 2003,
8 2004.

9 Q. What did that consist of?

10 A. So that consisted of multiple visits with
11 physical therapy. I think every week I think he was
12 seen two or three times a week, which is a lot, and
13 that was graded therapy. So physical therapists are
14 very disciplined in the way that they assess
15 mobility and strength, and then accelerate
16 challenges and exercise programs to try to get you
17 to maximal functioning.

18 At the end of that period in 2004, for
19 example, his maximal functioning at that time was
20 that he could walk for five minutes on a treadmill
21 at a level of 1, which is one mile an hour, and he
22 was not thought to be stable walking independently
23 without an assistive device like a walker without
24 falling.

25 Q. And that was approximately 14 years ago?

1 A. That was in 2004. So yes, that sounds
2 right.

3 Q. And since that time, has Mr. Perez
4 undergone any further physical therapy regimen?

5 A. Yeah. He's had physical therapy several
6 different times due to reinjury or further mobility
7 issues. Hospitalizations often include physical
8 therapy assessment and treatment, which was part of
9 what was happening with him.

10 Q. Since that time, has he required the use
11 of any devices in order to ambulate or be mobile?

12 A. Yes, consistently. So even after that
13 2004 status that I described, in 2006,
14 unfortunately, he was shot in both legs and that
15 further sort of incapacitated his ability to walk.
16 And so through the medical records, if you're just
17 looking at mobility, he's very often in a
18 wheelchair. He's given special dispensation to have
19 a chair out in the yard or to be transported between
20 his different locations using a wheelchair or
21 without shackles or other things because of the risk
22 of falls. Oftentimes he asks to be given a cane
23 instead of a walker during the periods of time when
24 he's on a walker, but that almost always leads to
25 more falls and he ends up back in a wheelchair with

1 a walker.

2 So the most stable condition seems to be
3 wheelchair for short distances or around the place
4 where he actually lives, and then a walker for short
5 transport if he's walking.

6 Q. And are you talking generally about the
7 period from 2003 to the early part of 2016?

8 A. Yes.

9 Q. Okay. So you're not talking about any
10 specific time when you described those?

11 A. Oh, no, I'm sorry. Right. That's just
12 sort of a background theme. I would describe that
13 as that's his best, most mobile state, is what I was
14 just describing.

15 Q. Okay. And you talked about some traumatic
16 injuries that it's your opinion that Mr. Perez has
17 sustained. Has he sustained any brain injuries?

18 A. Yes, several of those. We know that he
19 has had a seizure disorder as early as 1992. He was
20 known to be in at least two different car accidents
21 in 2002 and in 2005 that included head injuries that
22 were said to have worsened his seizure disorder at
23 that time as well. I believe there may have been
24 other head injuries, as well. They're referenced
25 sort of vaguely in the record, but those are the two

1 that I can be certain of.

2 Q. Are there any other injuries that you
3 would classify as traumatic injuries that Mr. Perez
4 has sustained?

5 A. So I think it's important to recognize
6 that his abdominal injuries have had a really
7 profound impact on both his digestive health and
8 also his musculoskeletal health. So he's had so
9 much trauma to his abdominal wall that his, sort of,
10 core musculature is now permanently distorted. His
11 physical therapy notes are really clear that his
12 strength is limited, his posture is very weak and
13 unable to really ever improve because his muscular
14 status can't really get itself coordinated again
15 because of all of this disruption that he's had, and
16 that makes him very prone to falls and makes him
17 less able to accommodate the fact that he's had
18 these leg injuries, as well. That's part of the
19 reason why he's so prone to falls.

20 Additionally, the internal injuries of the
21 stabbing are a couple of fold. I mean, you can
22 obviously hit important organs and things like that
23 if you get stabbed, but he's had a really remarkable
24 accumulation of scar tissue inside of his abdomen,
25 which is very dangerous because then your intestines

1 can't move through their usual course the way that
2 they need to.

3 Q. And the traumatic injuries to Mr. Perez'
4 abdominal region -- are those injuries that were in
5 place in 2004?

6 A. Some of them, yes.

7 Q. Okay. And also in 2014?

8 A. Oh, yeah, absolutely, including additional
9 accumulated injuries over the course of that time.
10 So 2014, for example --

11 Q. Well, let's not talk -- I'm not going to
12 ask you about that yet, Dr. Brislen. Are there any
13 other diagnoses, physical problems, that it's your
14 opinion that Mr. Perez has had in this time period
15 from, say, 1992 to 2016 that you would classify as
16 internal medicine complaints?

17 A. Sure. Yeah. So I mean, we've been
18 discussing his musculoskeletal health. I think the
19 rest of his diagnoses are also substantial.

20 When we talk about internal medicine,
21 patients often characterize them just by a list of
22 their problem list, is what we call it. So besides
23 the musculoskeletal stuff that we've been
24 discussing, he has significant digestive dysfunction
25 relative to all the scar tissue and things that have

1 happened in his abdomen. He has diabetes type II.
2 He's now insulin-dependent. There's a question of
3 whether or not he has hepatitis C, and I'm not sure
4 about that. We know that he's been exposed to
5 hepatitis C. I don't know that he really has the
6 viral infection.

7 Q. So stopping you there, there are records
8 that may indicate that, but you question whether or
9 not they're accurate?

10 A. That's right.

11 Q. And why is that?

12 A. So hepatitis C is an acquired virus that
13 about a third people that contract hepatitis C are
14 actually able to clear the virus on their own and
15 are, therefore, immune after that. Otherwise, if
16 you don't clear it, you have a permanent infection
17 until recently; we have more effective medications
18 to treat it.

19 But the standard way to diagnose hepatitis
20 C is you do a screening test for an antibody. And
21 if you're looking for hepatitis C in people that are
22 at risk, which anyone in a prison is at risk, anyone
23 born between 1945 and '65 is at risk. It's a very
24 common virus. You screen by doing a blood test to
25 look for an antibody. An antibody would show that

1 you've been exposed to the virus at some point in
2 your life; you did have an infection. If that
3 antibody is positive, that means you've been
4 exposed, and then what you do to confirm whether or
5 not you have an active infection is called a viral
6 load, where you actually look specifically for the
7 little bits of virus floating around in your blood
8 to confirm that you're still infected.

9 Q. And from what you can tell, that wasn't
10 done?

11 A. From what I could tell, that wasn't done.
12 I couldn't find any reference to that test actually
13 having been done.

14 Q. Now, despite your understanding that that
15 test wasn't done, is the hep C record carried
16 forward in time in the records?

17 A. Yes, it is. We call that chart lore.
18 Oftentimes our assessment of patients is built not
19 only on what the patient is able to tell you at that
20 time, but upon some degree of review of medical
21 records going forward. So chart lore is when a
22 diagnosis gets carried forward through years and
23 years, and is never really re-evaluated or inspected
24 to see if that's valid or not.

25 Q. Has Mr. Perez had any issues with chronic

1 pain?

2 A. Yes, he does. He has a lot of chronic
3 pain issues.

4 Q. And what time period do those issues span?

5 A. He has chronic pain issues through the
6 entire scope of his record.

7 Q. And how about diabetes? I think you
8 talked about that.

9 A. He was borderline diabetic for a number of
10 years, and I would have to go back to figure out
11 when he actually crossed that threshold of
12 diagnosis, but I'm going to say it was, like, 2012,
13 maybe.

14 Q. Okay. And does he have hypertension?

15 A. He has hypertension. He also has high
16 cholesterol. He has depression. He has the seizure
17 disorder that I already mentioned.

18 Q. Let's talk a little bit about the seizure
19 disorder. What kind of -- speaking broadly, what
20 kind of seizure disorder does Mr. Perez have?

21 A. Seizure disorders can be difficult to
22 characterize, and in the earlier part of his medical
23 records, it's pretty clear that both the patient --
24 both Mr. Perez and his providers thought that he had
25 just a classic tonic-clonic type seizure disorder.

1 Q. Tell the jury what that is.

2 A. Tonic-clonic seizures are the classic kind
3 that you might see on TV or something, where someone
4 becomes unconscious, they lose their posture,
5 they're shaking, sometimes they lose bowel and
6 bladder continence, that kind of thing. Very
7 dramatic, very obvious and easy to identify.

8 What we've since learned -- or what Mr.
9 Perez has since learned is that he also has
10 subclinical seizures, or absence seizures, is what
11 they're called. Those are seizures that are really
12 just affecting your consciousness and they're very
13 difficult to diagnose. They can look like someone
14 just spaces out for a few seconds. They might just
15 be confused or have a hard time communicating for a
16 few minutes. Those are difficult to diagnose. And
17 one of the reasons why they're so hard to tease out
18 is because seizures also have an amnestic component,
19 meaning amnesia, meaning you don't know, yourself,
20 that you've just had one. It's pretty easy to know
21 that you've had a seizure if you wake up on the
22 floor. But if you just sort of come to at your desk
23 and wonder if you dozed off for a few seconds, it's
24 very hard to know if that's what's happening.

25 So witnesses to seizures become really

1 crucial in the evaluation and diagnosis in those
2 cases.

3 Q. Okay. And you talked about a couple of
4 kinds of seizures. Can you characterize Mr. Perez'
5 seizure disorder as simple or complex or in some or
6 other way?

7 A. Those are tricky words. So a simple
8 seizure, if you're talking medically, a simple
9 seizure is a seizure that doesn't take over your
10 consciousness. And a complex seizure is one that
11 does. So he has complex seizures. He also has --
12 if you were speaking between physicians, for
13 example, you would say he suffers from multiple
14 kinds of seizures, which is very common. He doesn't
15 just have a solitary seizure diagnosis. He has more
16 than one kind.

17 Q. Is that common among the general public,
18 or common among folks with seizures disorders?

19 A. Common among folks with seizure disorders.

20 Q. You talked about tonic-clonic seizures,
21 the kind where people might be on the floor
22 convulsing. After one of those seizures occurs, can
23 you tell the jury what happens?

24 A. So sometimes after a seizure -- and
25 oftentimes it just depends on the person and the

1 patient -- there is a post ictal phase. I'm sorry,
2 there is always a post ictal phase after a seizure,
3 and that is like the grogginess, slow to come back
4 to sort of fully alert. Post ictal can be just
5 sluggishness. Oftentimes, though, it's a very
6 frightening, disorienting sort of quasi-conscious
7 state where patients that are coming out of seizures
8 can be violent or physically disoriented, thrashing
9 around, things like that, while their brain sort of
10 tries to get back to normal and settled.

11 Q. And is that also the time period when the
12 amnesia that you talked about might occur?

13 A. That's right. So oftentimes if you don't
14 have memory of the seizure that you're in, you also
15 don't have memory of the post ictal phase either.

16 Q. Okay. Does Mr. Perez carry any other
17 diagnoses related to seizures? Or has he at any
18 time? I'm not necessarily talking about the
19 present, but --

20 A. Yes.

21 Q. Specifically in 2012?

22 A. Right. So the way that Mr. Perez became
23 aware that he has more than one kind of seizure was:
24 He was actually in the hospital at the University
25 and there was one of these periods of -- his care

1 team recognized that he wasn't communicating the way
2 that they expected, and he wasn't following
3 instructions the way that he should. They actually
4 called a psychiatry consult, which wasn't able to
5 tease out what was going on, and then they asked a
6 neurologist to take a look at him, and he was then
7 diagnosed with what's called subclinical status
8 epilepticus.

9 Status is one of these Latin root words we
10 use, but status means you're frozen in a seizure,
11 and that's a seizure emergency. So this is, like,
12 if you've ever heard that somebody who has a seizure
13 that lasts longer than a certain number of
14 minutes -- that's when you call 911 or something
15 like that. If you get stuck in a seizure, it can be
16 life-threatening, especially if you're already sick,
17 like, in the hospital. So he had a single seizure
18 during the stay at UNM that lasted at least eight
19 days without a break.

20 Q. And do you know how it was that that
21 seizure ended?

22 A. Yeah. So he was finally diagnosed with a
23 seizure by a neurologist doing an EEG, and the
24 neurologist would visit him more than once a day
25 oftentimes, and he was tried on, I think, four

1 different antiseizure medications. And the way that
2 you use those is, you layer them one on top of
3 another, and in the case where you might have an
4 actual -- an EEG is like an electronic reading of
5 brain waves. So they're watching what's happening
6 to try to dampen that and make things look more
7 normal.

8 And at the end of eight days they finally
9 found one medication, which is called lacosamide,
10 which he'd never been on before, and they were able
11 to stop the seizure with that and withdraw the other
12 medications. So then he was continued on lacosamide
13 going forward as a way to minimize his seizures.

14 Q. If you know, from 1992 through the
15 present, how many different seizure medications has
16 Mr. Perez been on that are documented?

17 MS. ARMIJO: Objection, foundation. I
18 believe she indicated that she only reviewed records
19 through 2016.

20 MS. FOX-YOUNG: Your Honor, I think she
21 said the substantial review.

22 BY MS. FOX-YOUNG:

23 Q. And I can ask you about that period first.

24 A. Sure. And you said --

25 Q. Let me rephrase. If you know, how many

1 different seizure medications have been documented
2 as used to treat Mr. Perez from the period 1992 to
3 early 2016?

4 A. Seven.

5 Q. Okay.

6 A. So I would like clarify that, if that's
7 okay. You know, we use seizure medications for both
8 their anti-epileptic activity, both for their
9 seizure benefit, but we also use them for other
10 uses, as well. Sometimes in the medical record it
11 was very clear that these anti-epileptic medications
12 were being used specifically for his seizures, and
13 other times there's a little bit of ambiguity, like,
14 were they being used for neuropathic pain, for
15 example, or were they being used as a psychoactive
16 medication. So sometimes these were prescribed by
17 his psychiatrist, because they can be
18 mood-stabilizing. Oftentimes that's not accidental.
19 You use them because they have complementary
20 benefits. They might also help with seizures and
21 also help with mood as a side benefit for that.

22 So the seven medications that he's on are
23 all clearly within the sort of label of antiseizure
24 medications, though what they were being used for at
25 the time sometimes is a little bit fuzzy.

1 Q. There is some overlap --

2 A. Correct.

3 Q. -- in their use? And I don't mean there's
4 some overlap in their use for Mr. Perez. There's
5 some overlap in their FDA approved use or
6 prescriptive use?

7 A. Both of those are true. I think that they
8 were used for more than one reason in Mr. Perez, and
9 yes, they're commonly used for more than one thing.

10 Q. And you testified that you have also
11 reviewed records dating after February 2016; is that
12 right?

13 A. Very superficially.

14 Q. Have you reviewed any records pertaining
15 to Mr. Perez' seizure activities since that time?

16 A. I could recheck my notes, but I don't
17 think so.

18 Q. Okay. You discussed a number of internal
19 medicine diagnoses and complaints from Mr. Perez,
20 and I think -- did you also say that you reviewed
21 his mental health diagnoses?

22 A. Yes, that's correct.

23 Q. And what are those?

24 A. So his current diagnoses from the most
25 recent psychiatry note that I reviewed are major

1 depressive disorder, anxiety. The psychiatrist
2 described diagnoses according to this five-axis
3 system, and I'm thinking about other things that
4 might show up on there.

5 One of the axes describes background
6 issues, sort of innate issues since childhood, and
7 it was described that he's known to have a low IQ
8 and to have needed mental health treatment since he
9 was very young.

10 Q. And you talked about his -- the recent
11 diagnoses. Are there any other mood disorders with
12 which he was diagnosed at any time during the period
13 that you've reviewed?

14 A. Yes. His early notes described a disorder
15 called intermittent explosive disorder, which is an
16 impulse control disorder that overlaps a number of
17 other psychiatric diagnoses. I mean, it's used in
18 terms of other psychiatric diagnoses.

19 Q. Can you explain what that means? And if
20 you can, in layman's terms, you said it overlaps
21 other diagnoses. What does that mean?

22 A. So intermittent explosive disorder is
23 pretty easy to understand what it's talking about in
24 the title. It is a description of a kind of
25 behavior or an impulse control issue where somebody

1 might have, like, extremely short temper. You might
2 think it that way, where rising emotion and ability
3 to control your emotions and behavior is questioned.

4 Intermittent explosive disorder is what we
5 call a diagnosis of exclusion, which means it's a
6 catch-all label for certain kinds of things that we
7 don't have another name for. So another example you
8 might be familiar with is, like, fibromyalgia.

9 Fibromyalgia is a disease that has very intense back
10 pain. Before we give you a diagnosis of
11 fibromyalgia, we need to make sure there is nothing
12 actually musculoskeletally wrong with your back;
13 right? So you don't have broken bones, you don't
14 have a muscle spasm. You have this other thing
15 called fibromyalgia. So there is a workup that has
16 to be done before you give somebody this diagnosis.

17 Q. Do you know if that workup was done with
18 Mr. Perez?

19 A. I don't see -- so you very clearly have to
20 confirm in intermittent explosive disorder that
21 they're not having these episodes of impulse control
22 due to, like, for example, a post ictal state or due
23 to another psychiatric condition.

24 Q. When you say "due to a post ictal state,"
25 you mean it could be due to -- result from a seizure

1 or seizures?

2 A. Right.

3 Q. Go on.

4 A. So as I reviewed the records, I did not
5 see evidence that a workup had been done to prove
6 that he has intermittent explosive disorder. I
7 suspect that that is why that diagnosis has fallen
8 off his more recent psychiatric records, because
9 that label may not be appropriate, given the other
10 medical conditions that he has.

11 Q. So do you know if the other possible
12 disorders were excluded before making a diagnosis
13 that appears on the records of IED?

14 A. I do not know that. It doesn't seem like
15 it.

16 Q. Okay. And so today -- or in the most
17 recent records that you described, when did those
18 date to, those psychiatric records?

19 A. The one that describes an anxiety
20 disorder, major depressive disorder, the diagnoses
21 that I just went through, that was in 2016.

22 Q. So as of that time in 2016, is it your
23 opinion -- or can you give an opinion as to whether
24 or not Mr. Perez carried the diagnosis of
25 intermittent explosive disorder?

1 A. According to his psychiatrist's notes, no,
2 that was not listed as one of his diagnoses then.

3 Q. Do you think this is another example of
4 what you called chart lore?

5 A. That's my suspicion.

6 Q. Okay. And can you explain why?

7 A. So there are lots of different kinds of
8 medical records; right? It would be very convenient
9 for me if all I saw was a chart of notes by
10 physicians, but that's not what we have. We have
11 vital signs and medication administration records
12 and intake records and all different kinds of
13 flavors of things. So the label intermittent
14 explosive disorder, which is abbreviated IED in the
15 medical records, gets carried forwards on lots of
16 ancillary stuff, not by his psychiatrists, per se,
17 but by other people on the care team who I believe
18 are probably just looking back and carrying
19 diagnoses forward, just the same way those records
20 continue to say hepatitis C the whole time, though I
21 don't see that we've got confirmatory proof that he
22 has that disorder, either.

23 Q. Dr. Brislen, can impulsivity come from
24 seizures?

25 A. In a post ictal state, you would see poor

1 ability to control your emotions and behavior. That
2 is one of the ways to characterize impulsivity.
3 It's different than, I saw a donut on the table and
4 I ate it. That's my impulse. But impulsivity -- if
5 you characterize it as difficulty to control
6 emotions and behaviors, then yes, that would be
7 characteristic of post ictal state.

8 Q. Dr. Brislen, does any one person know how
9 many seizures Mr. Perez has had in his life?

10 A. I don't think so.

11 Q. Do the records that you reviewed from 1992
12 through the early part of 2016 accurately reflect
13 how many seizures Mr. Perez has had in that time
14 period?

15 A. No.

16 Q. How do you know that?

17 A. I think they would at very high risk of
18 underrepresenting the number of seizures that he's
19 had. The only seizures that we have documented in
20 the record are witnessed seizures by other people.

21 Q. Why do you say that it's your opinion that
22 they underrepresent the number of seizures that Mr.
23 Perez actually had?

24 A. Because in notes with physicians, when Mr.
25 Perez was actually in clinic with his physician or

1 his psychiatrist -- I mean, psychiatric physician --
2 he describes his angry outbursts as oftentimes he
3 says, "I just black out and then I go off." And to
4 me, that doesn't sound like a short temper. That
5 sounds like a seizure. And because I haven't seen
6 examples of anyone else being alerted to the, Wait a
7 second, we should see if he's had further seizure
8 workup, that's my question. I feel like we can't
9 say that he hasn't had a lot of seizures unless he's
10 established with a neurologist and had a better
11 opportunity to quantify how often and how much this
12 is happening.

13 Q. Do the records document some seizures that
14 Mr. Perez didn't report but that were witnessed?

15 A. I'm sorry, could you repeat that?

16 Q. Do the records that you reviewed document
17 any seizures that were not reported by Mr. Perez but
18 were witnessed as having happened?

19 A. It wasn't really differentiated. The only
20 one that I can think of is the one at UNM.
21 Actually, that's not true. So he had this very
22 difficult-to-diagnose seizure at the University in
23 2012. 2013, I'm sorry. That was in 2013. He
24 also -- while he was in the medical facility, there
25 is a hospital-like facility within the incarceration

1 environment, and he had at least one, I think, two
2 seizures in that period that were documented as
3 witnessed without Mr. Perez himself saying, "I had a
4 seizure."

5 The things that show up in his clinic
6 notes, it's not clear who reported it.

7 Q. Okay. And do you yourself in clinic treat
8 any patients with epilepsy?

9 A. I do maintenance of care for patients with
10 epilepsy, meaning that the medication choice --
11 medication choice and longitudinality as dictated by
12 my relationship with the neurologist who I'm in
13 touch with, and then I'll maintain them on their
14 therapy. When things are complicated, I involve my
15 neurology colleagues.

16 Q. And when things are complicated in a
17 certain specialty, you consult with specialists;
18 right?

19 A. That's right. That's part of -- right.

20 Q. Okay. But for patients who you see who
21 have seizure disorders, are there times when those
22 patients have seizures and they don't know they've
23 had them?

24 A. Yes.

25 Q. And so if they are alone when they have

1 them, they're not reported; right?

2 A. Oftentimes, right.

3 Q. Okay. And so if Mr. Perez was alone and
4 had a seizure, it might not be reflected in the
5 records; right?

6 A. That's true.

7 Q. Okay. Is that one reason why the records
8 certainly don't document every seizure he had?

9 A. That's my concern, yeah.

10 Q. Are there any other organ system problems
11 or general internal medicine complaints or diagnoses
12 that Mr. Perez has had over this time period we've
13 been discussing?

14 A. I think his digestive health has an
15 incredible impact on his quality of life, and -- but
16 we mentioned that already. Are you asking about
17 diagnoses we haven't covered yet?

18 Q. I just want to make sure that there is
19 nothing that you want to bring to the jury's
20 attention as to other internal medicine complaints.
21 And let me ask you specifically about Mr. Perez '
22 digestive health. In this time period we've been
23 discussing, has he been prescribed a special diet?

24 A. Yes. So for -- two things. He's on a
25 diabetic diet, which is pretty standard. He's

1 also --

2 Q. I'm sorry, could you repeat that?

3 A. He's on a diabetic diet, which is a pretty
4 standard thing that we're familiar with. He's
5 also -- because of all the scar tissue in his
6 abdomen and because he's lost a significant amount
7 of his functioning intestines, he has to be on a
8 special diet to avoid constipation and
9 reobstruction. So his intestinal obstruction was a
10 catastrophic thing that happened a number of years
11 ago. So he has to have a bland, low-residue type
12 diet.

13 Q. When did that catastrophic thing happen?

14 A. September of 2012.

15 Q. Okay. Do you know if this diet -- just
16 from your review of the records and your knowledge
17 of the system, do you know if this diet is difficult
18 to get in prison?

19 A. I imagine that it is. I didn't have
20 access to any of the actual, like, dietary log.

21 Q. If you don't know --

22 A. All I saw was requests for a special diet,
23 and then Mr. Perez' response to that, asking for
24 different adjustments and things like that to make
25 it more tolerable.

1 Q. Okay.

2 A. So I guess I would like to say I have no
3 idea if it's difficult to get or not. It seems
4 likes there has been a lot of documentation related
5 to his diet.

6 MS. FOX-YOUNG: Your Honor, I'd like to
7 show the witness a document that I intend to use as
8 a demonstrative aid. May I approach?

9 THE COURT: You may show it to her, yes.

10 BY MS. FOX-YOUNG:

11 Q. Dr. Brislen, do you see this four-page
12 document which we'll mark as defense next in order?

13 A. Yes.

14 Q. Can you tell me if this would aid in your
15 testimony today?

16 A. I think so. I think this is a nice marker
17 of where he was when, which will help me spell out
18 the series of events.

19 Q. Thank you.

20 MS. FOX-YOUNG: What is our next in order?

21 FY. Your Honor, I'd like to mark this as
22 Defendants' FY, if the Court will allow.

23 THE COURT: You may.

24 MS. FOX-YOUNG: And I'd like permission to
25 publish it to the jury for use as a demonstrative

1 aid.

2 THE COURT: Any objection, Ms. Armijo?

3 MS. ARMIJO: No, Your Honor.

4 THE COURT: All right. You may do so.

5 MS. FOX-YOUNG: Thank you, Your Honor.

6 THE COURT: Ms. Fox-Young.

7 BY MS. FOX-YOUNG:

8 Q. All right. Dr. Brislen, can you see this
9 first page of Exhibit FY?

10 A. Yes.

11 Q. And does it appear to be calendars from
12 September through December of 2012?

13 A. Yes, that's right.

14 Q. So I want to ask you first about September
15 2012. So I'm just going to zoom in on that month,
16 and I want to talk to you first about Mr. Perez'
17 seizure disorder and your knowledge of the status of
18 that disorder in September 2012. Can you tell me if
19 it is known whether or not Mr. Perez had any
20 seizures in September of 2012?

21 A. You know, I'm not sure specifically. I
22 could review my notes, if you like.

23 Q. Would it help you recall if I provide you
24 with your notes?

25 A. It would.

1 MS. ARMIJO: Your Honor, the United States
2 has not been provided with a copy of the notes. May
3 we request one at this time?

4 THE COURT: Do you have an extra one?

5 MS. FOX-YOUNG: Your Honor, I don't have
6 an extra one, but the substance of all this has been
7 provided, but I'm happy to provide a copy.

8 THE COURT: If you want to hand it to Ms.
9 Standridge, she can make a copy for Ms. Armijo.

10 Does that work for you, Ms. Armijo?

11 MS. ARMIJO: Yes, sir. Thank you.

12 THE COURT: All right.

13 MS. FOX-YOUNG: If the Court doesn't mind,
14 I'll continue and get back to that.

15 THE COURT: You may.

16 BY MS. FOX-YOUNG:

17 Q. Do you see on this exhibit where there is
18 a portion that's marked in yellow?

19 A. Yes.

20 Q. And that begins September 4?

21 A. Right.

22 Q. And you see where it reads Memorial
23 Medical Center?

24 A. Yes.

25 Q. Do you know, from your review, where Mr.

1 Perez was September 4 to 6?

2 A. Yes. So he was admitted to Memorial
3 Medical Center, which is a hospital, I'm assuming,
4 that's nearby to wherever he was held at the time,
5 because of complaints of extreme abdominal pain.

6 Q. Okay.

7 A. And then he was discharged to --

8 Q. And so he remained at Memorial Hospital
9 until the 6th of September?

10 A. That's right.

11 Q. And then where did he go?

12 A. Back to the jail or -- I don't know.
13 Whichever facility he was at. He went to, like, a
14 medical facility within wherever he had been held.

15 Q. Okay.

16 A. So they're calling it the LTCU; right.

17 Q. And if at any time -- I know you've looked
18 at a lot of records. If at any time you want to see
19 Mr. Perez' location history, we can compare it with
20 this record.

21 A. Okay.

22 Q. I think we have your notes back, Dr.
23 Brislen. So I want to back-track to a question that
24 I asked you about whether you know from your review
25 and from what you've documented whether Mr. Perez

1 had any seizures that were documented in September
2 2012.

3 A. Yes, I did. He had a seizure on September
4 1st of 2012.

5 Q. I'm going to make a notation then
6 reflecting your testimony on September 1st of an
7 asterisk, and I'm just going to add to this legend
8 at the bottom and we'll say an asterisk means a
9 seizure. Okay, Dr. Brislen?

10 A. Sounds good.

11 Q. So the seizure that happened on September
12 1st -- do you know what variety of seizure it was?

13 A. Yes, this was one of the reported
14 witnessed seizures of a tonic-clonic nature, shaking
15 type, dramatic, obvious.

16 Q. Okay. And do you know if that's why Mr.
17 Perez went to the hospital on September 4?

18 A. That is not my recollection.

19 Q. Okay. Can you tell the jury why Mr. Perez
20 went to the hospital on September 4?

21 A. He went to the hospital on September 4
22 because he was having abdominal pain.

23 Q. Okay. And you already testified that he
24 remained there for three days?

25 A. Right.

1 Q. And then he went to a prison hospital?

2 A. That's right.

3 Q. And then do you know where he went after
4 that?

5 A. Yeah. So he got worse and he was admitted
6 to the University Hospital then on the 8th.

7 Q. And I have this zoomed in so you can't see
8 it, but do you know that the legend reflects that
9 the portion in blue is UNMH?

10 A. Right.

11 Q. So according to your review, do you know
12 how long Mr. Perez stayed at UNMH?

13 A. Somewhere on the order of eight to ten
14 weeks.

15 Q. And did anything significant happen while
16 he was at UNMH in September 2012?

17 A. Yes. So what happened even since the
18 beginning, this relates to the scar-tissue-in-his-
19 abdomen issue that I was outlining before. When you
20 have scar tissue in your abdomen and your intestines
21 are at risk of becoming sort of entangled in that so
22 they can't work, that's oftentimes referred to as a
23 small bowel obstruction.

24 So what happened in earlier September in
25 the Memorial Medical Center is that he had this

1 extreme abdominal pain, and then probably whatever
2 was blocked released. He got a little bit better.
3 They were confident that he would be able to
4 continue to produce bowels movements, to stool on
5 his own, and that's why he was discharged. But then
6 pretty quickly his pain returned. He developed a
7 fever, which is a very big red flag if you're
8 developing abdominal pain issues. And when he got
9 to the University, they did a CT scan that showed
10 that he had free air.

11 Q. Can you tell the jury what the CT scan --

12 A. CAT scan. Imaging, a picture of the
13 inside of your abdomen. It's a lot more detailed
14 than a plain x-ray.

15 Q. And Dr. Brislen, just try to spell slowly,
16 especially with the medical words.

17 A. The imaging that they did at the
18 University Hospital showed that he had air inside of
19 his abdominal cavity. And that is always a big red
20 flag. That means something has broken open. So on
21 the assumption that he had a bowel obstruction, a
22 piece of blockage that has then developed to the
23 point where it's actually broken open, he had
24 emergency surgery.

25 The surgery that they did revealed

1 actually quite a bit of now disseminated or
2 widespread infection within his abdomen. He had
3 several abscesses, which are pockets of infection,
4 as well as an area of intestine that had died
5 completely due to getting entangled, it didn't have
6 enough blood supply to be able to function. And the
7 place of the rupture was so badly damaged that they
8 weren't able to just sew up the hole; they had to
9 connect it to the outside. So they gave him an
10 ostomy, which means you have a hole in the side of
11 your abdomen where you put a bag over it and collect
12 poop into a bag for a number of -- you know, however
13 long it takes until you get better.

14 Q. Dr. Brislen, do you know what week all
15 this happened? Or weeks?

16 A. This all -- so this surgery probably
17 happened on the 8th or 9th, depending on how late he
18 was there. This was an emergency thing.

19 Q. So he had emergency surgery, and you can
20 go on. You had described the ostomy bag. What
21 happened after that? I'm just going to mark on here
22 "surgery."

23 A. Well, he had so much infection and
24 swelling and distortion to the inside of his abdomen
25 that they weren't able to close him. They couldn't

1 sew him back up at the end of the surgery. So they
2 put a special kind of dressing on and transferred
3 him to the surgical ICU with an open abdomen,
4 meaning actually the two sides are still far apart
5 from each other. Oftentimes you just can't even
6 bring them together because there is so much
7 swelling, so you put kind of a fancy spongy Saran
8 Wrap kind of thing on there to prevent infection.

9 Q. You say oftentimes. Is this something
10 that happens often?

11 A. No. This is something that I've seen
12 happen as a course of my medical training, and these
13 devices that -- the thing I described as Saran Wrap
14 and spongy -- a wound VAC is another word for it --
15 was actually invented during part of my training, so
16 we were all very excited that these were able to be
17 used. So it's something that does happen. It's
18 something that you can look up in the surgical
19 literature, and there are enough cases there, but I
20 wouldn't expect that anyone else in this room would
21 ever have to go through this.

22 Q. Okay. So after -- I don't know if you've
23 finished describing the emergency surgery. Go ahead
24 and please finish, if you hadn't.

25 A. So his -- he had also -- let me think how

1 to describe this. So besides the fact that they
2 couldn't close the surgical cut that was made, there
3 was also an area of bowel that was so entangled with
4 scar tissue and skin that it actually resolved into
5 a fistula. So that means part of your intestines
6 actually meets the skin and there is a hole there
7 rather than a loop of bowel beneath the skin as it's
8 supposed to be.

9 He had -- I could more specifically
10 research the notes; I don't think it's really that
11 important -- but somewhere on the order of seven or
12 eight procedures then over the following several
13 weeks to continue to help this infection and this
14 situation resolve. So that means abdominal wash-out
15 where they very literally pour a bunch of
16 antibiotics into your abdomen and slosh it around
17 and then drain it out and hope that that treats any
18 residual infection they haven't been able to find.
19 I know I'm speaking a little quickly. Sorry.

20 They also had an enterotomy that they had
21 to repair, which means in the urgency of the
22 original emergency surgery, a nick was made in one
23 of the loops of bowel that led to another infection
24 that he had to have. Rudy almost died during this
25 time. I think it was in October that he was

1 actually referred to the palliative care service,
2 which means special doctors that are just there for
3 relieving suffering and sort of transitioning care
4 away from care of curative intent, but really more
5 to comfort measures, were called in to talk to him
6 about whether or not we ought to be preparing for
7 sort of end-of-life measures.

8 Q. Okay. And that happened in October of
9 2012, the palliative care?

10 A. I think it did. I don't have the specific
11 date noted, but it was approximately two-thirds of
12 the way through his UNM stay.

13 Q. Okay. And let me just back up. I know
14 this calendar starts in September 2012. Did Mr.
15 Perez have any documented tonic-clonic shaking
16 seizures before September 1st, 2012?

17 A. Yes.

18 Q. Okay. Can you tell me about those?

19 A. The last documented one that we know of
20 before that was July 2010.

21 Q. Okay. And that was a documented
22 tonic-clonic seizure?

23 A. Correct.

24 Q. And so sometime, you believe in October of
25 2012, palliative care was ordered. And is that --

1 you said that's where you start planning for end of
2 life?

3 A. Correct.

4 Q. I'm going to just write "palliative care"
5 next to October 2012. Do you think that's
6 accurately reflecting your review?

7 A. Sure.

8 Q. And is that the time when your family
9 members prepare to say goodbye to you?

10 A. Oftentimes, that is part of the course of
11 palliative care.

12 Q. Okay. Mr. Perez remained at UNMH for some
13 time; right? After that?

14 A. Right, through November 19.

15 Q. And so what else was going on with him?
16 Did he remain in palliative care through late
17 November? Did he have other procedures done?

18 A. He did have other procedures done and my
19 understanding is that really he started to
20 stabilize. So the antibiotics were working, the
21 surgical process, the different procedures that he
22 had were able to get him to a place where his sort
23 of organ systems could function again. He was
24 probably somewhere in November able to come out of
25 ICU care. Usually, you're kept -- when you're going

1 through this much surgical trauma, oftentimes you're
2 in the ICU, you're in a medical coma, you have a
3 breathing tube down your throat, that kind of thing.
4 So he started to recover to the point where he could
5 breathe and function on his own. The swelling got
6 down to the point where they were able to -- they
7 never could actually reapproximate the two edges of
8 that surgical wound because he had what was called
9 frozen abdomen. The scar tissue in there had become
10 so dense and involved that there wasn't any anatomy
11 normalization that could happen, and so he had
12 another surgery that they debrided, which means you
13 cut away, the scar tissue that they could access to
14 try to give him normal bowel function again. And
15 they did a skin graft. So he had a skin donation
16 from one part of his body pulled over onto that
17 abdominal scar, and that was then closed so he
18 didn't have to have that mechanical sponge thing
19 anymore. And that was the point where he was deemed
20 ready to go back to the prison hospital.

21 Q. Okay. Would it accurately reflect your
22 opinion if I called this surgery on the 8th or 9th
23 emergency surgery?

24 A. Definitely.

25 Q. And then you referred to approximately

1 seven other procedures; that is right?

2 A. That's right.

3 Q. So approximately seven other procedures,
4 those happened between September 9th and late
5 November?

6 A. Right.

7 Q. Okay. So I'm just going to write on here,
8 if this is fair and accurate, "approximately seven
9 additional procedures." And so you said the
10 antibiotics started working; right?

11 A. That's one way to characterize what might
12 have made the difference in him stabilizing. So if
13 you think of that palliative care consult as a
14 crossroads for him, at that point when a surgery
15 team calls in the palliative care team, usually it
16 means we are doing or have done everything we can
17 think of, and we're no longer getting better; we're
18 worried we're sliding backwards and losing ground
19 with this patient. At that point, I don't know what
20 it was that made that turn the corner. Sometimes
21 you just need time, sometimes a nice dose of good
22 luck. I don't know.

23 Q. But somehow having been on death's door,
24 Mr. Perez was actually released to the prison
25 hospital on November 19th or 20th, was he not?

1 A. That's right.

2 Q. Okay. And do you know if he had any
3 additional seizures in November that were
4 documented? And if you need to refer to your notes,
5 Dr. Brislen, that's fine.

6 A. He did. He had another seizure on
7 November 30, but as you can see there, he had
8 already been briefly readmitted to UNM at one point.
9 So witness-documented seizure there on November 30.

10 Q. So we'll call these witnessed seizures.
11 And the eighth day status epilepticus seizure that
12 you talked about, when did that happen?

13 A. It's going to be on a different page.
14 That happened in May of 2013.

15 Q. Okay. And so November 30 there is another
16 witness-documented seizure, and this is after he had
17 returned to UNMH on the 23rd; right? And then gone
18 back to the prison hospital?

19 A. Right.

20 Q. And then he returned to UNMH. Did he
21 return to UNMH again in December?

22 A. Yes, he did.

23 Q. And do you know what that was all about?

24 A. I believe -- well, one of those UNM
25 readmissions -- and I think it was this one that

1 started on December 1st -- was because he tore out
2 his feeding tube.

3 Q. He had a perforation?

4 A. Well, he had a deliberate perforation. So
5 he had a tube in the side of his abdomen where
6 his -- where there's a little mechanical attachment
7 that you can put a tube into to put tube feeds
8 through. So he wasn't allowed to take enough food
9 by mouth that he could actually sustain himself, and
10 was discharged with this tube feed mechanism. So
11 there is a line there that got tugged, and it got
12 dislodged, and so you have to go back to the
13 hospital and get that reincorporated. The length of
14 that stay shows me that there was some kind of
15 complication probably. That he was there for a
16 whole week is a little bit surprising, and I would
17 have to go further into my notes than what I have
18 here to remember why that took so long.

19 Q. Okay. And then ultimately on December 11,
20 was he returned to the prison hospital?

21 A. That's right.

22 Q. Okay. Is there anything else of note with
23 regard to this emergency surgery and the opening of
24 Mr. Perez' abdominal cavity that you want to note in
25 2012?

1 A. Yeah. I mean, the fact that he could go
2 back to the prison hospital does not correlate with
3 if he were a community-dwelling person that he could
4 have gone home. He's still bed-bound, he has a tube
5 putting food into his stomach, he still has the
6 fistula on the side of his intestines, which -- I'm
7 sorry, this is a little bit gory, but essentially
8 tube feeds are being fed through a tube into his
9 stomach. The partly digested food then spills out
10 of the side of his abdominal cavity, is collected in
11 a container, and then is put back into the
12 downstream part of his intestine because those two
13 pieces have not been able to be reattached because
14 his abdominal wall is so fragile. And so he also
15 then has the ostomy bag that I mentioned. They're
16 collecting urine in a bag. He's still very much a
17 hospitalized, very sick person.

18 Q. Okay. And so is he in an intensive care
19 unit at the prison hospital?

20 A. They call it an intensive care unit, and
21 I'm not sure what that designation means. It's
22 different than a hospital would call an intensive
23 care unit.

24 Q. Would it be accurate if I wrote here on
25 this period in December that Mr. Perez had a feeding

1 tube?

2 A. Yes.

3 Q. Okay. And would it be accurate if I said
4 he had a detached intestine? I don't know what the
5 layman's word is for what you just described.

6 A. I'd never see it before reviewing this
7 case, either. I would call it a fistula. A
8 functional fistula. He has an ostomy, if you're
9 noting.

10 Q. And tell the jury what an ostomy is.

11 A. An ostomy is the site where the blockage
12 of his intestine that actually broke open was not
13 able to be reattached downstream so that he could
14 form and pass bowel movements normally. So they had
15 to divert that and take that piece of intestine
16 intentionally and bring it to the surface to collect
17 his stool. He also had what's called a PICC line,
18 P-I-C-C, which is a long-term in-dwelling port for
19 antibiotics and other medications to be given by IV.

20 Q. Okay. I'm going to write "port for
21 antibiotics."

22 A. Sure.

23 Q. And I'm going to just flip now to 2013.
24 And I know this calendar is a little smaller, but
25 can you see here that -- can you tell the jury

1 whether Mr. Perez remained in the prison ICU for --

2 THE COURT: Ms. Fox-Young, can we kind of
3 talk to the jury a little bit about lunch?

4 MS. FOX-YOUNG: Yes, Your Honor.

5 THE COURT: Our breaks are coming a little
6 late. Do y'all want to take a 15-minute break and
7 take a late lunch break? How many would like to do
8 that? Seems like most people.

9 Does that work for the counsel and
10 parties? So why don't we take about a 15-minute
11 break. Then we'll come back in and take a late
12 lunch break. All rise.

13 (The jury left the courtroom.)

14 THE COURT: All right. We'll be in recess
15 for about 15 minutes.

16 (The Court stood in recess.)

17 THE COURT: Let's go on the record. Do
18 you want to continue to tell me what you want, Ms.
19 Fox-Young?

20 MS. FOX-YOUNG: Well, Your Honor, there
21 are a few things that I want. But based upon what I
22 think is a Brady violation, a Jencks violation, a
23 Giglio violation, a Rule 16 violation, we'd ask that
24 the Court strike the testimony of Mario Rodriguez.
25 And I can submit a brief -- I can't do it this

1 minute, but I can do it tonight with some more
2 detail on the Court's prior rulings.

3 But I would just alert the Court to Agent
4 Stemo's testimony that this letter, Exhibit FV,
5 was -- she testified it was in the possession of the
6 FBI, of the Government, before they ever debriefed
7 Mario Rodriguez. There is no explanation as to why
8 it wasn't produced. And so that's my first request.

9 I also request any and all materials that
10 the FBI continues to have regarding the writings,
11 the statements of these informants. When we argued
12 this in the spring, similar issues for the Court,
13 the Court recognized that where these informants
14 have contrary and evolving stories, these statements
15 and the FBI notes on the statements are relevant and
16 often exculpatory. They are exculpatory where the
17 statements contradict one another. And that is why
18 the Court ordered the notes for Armenta, the
19 interviews of Armenta, the notes for the interviews
20 of Armenta, Martinez, Montoya, I think among others.

21 Mr. Castle has brought this up before Mr.
22 Lowry and I have. And in my brief, I'll include the
23 transcript cites and the Court's previous orders.
24 But here we are at trial in the defense case, we've
25 absolutely been prejudiced. Mario Rodriguez is off

1 the stand, and now we learn about these documents.

2 THE COURT: Well, let's get the documents
3 that the Government is going to give.

4 I don't have time right now, Mr. Beck, but
5 why don't you -- now that you know what Ms.
6 Fox-Young is requesting, why don't you be prepared
7 to give me a response when we have time.

8 MS. FOX-YOUNG: And Your Honor, we still
9 don't have those documents.

10 THE COURT: All rise.

11 (The jury entered the courtroom.)

12 THE COURT: All right, Dr. Brislen, I'll
13 remind you you're still under oath.

14 Ms. Fox-Young, if you wish to continue
15 your direct examination of Dr. Brislen, you may do
16 so at this time.

17 MS. FOX-YOUNG: Thank you, Your Honor.

18 THE COURT: Ms. Fox-Young.

19 BY MS. FOX-YOUNG:

20 Q. Dr. Brislen, before we broke, we were
21 starting to talk about Mr. Perez' medical history in
22 2013. Do you recall?

23 A. Yes.

24 Q. I'd like to ask you, first, do you know if
25 Mr. Perez remained in the prison ICU for several

1 months in 2013?

2 A. He did.

3 Q. And in fact, did he remain in the prison
4 ICU for most of 2013?

5 A. He did. His total time, if you include
6 UNM, was greater than a year that this sort of bowel
7 obstruction and rupture caused him to spend in
8 hospital.

9 Q. Okay. And a portion of that -- you just
10 said -- you referenced his time in UNM. Did he
11 spend some time in 2013 back in the University of
12 New Mexico Hospital?

13 A. Yes, he did. You can see that starts at
14 the end of May. That initially was actually a
15 planned admission, so he was following up with the
16 surgeons at the University as an outpatient in this
17 interim time. And sometime earlier than that in
18 May, he saw the surgeons in clinic, and they
19 determined that he was ready for sort of his
20 definitive surgical treatment to put all the pieces
21 back together again.

22 Q. Okay. So when you say there was a planned
23 admission in May, was that on May 27 or some other
24 day?

25 A. No, that's right; May 27.

1 Q. Okay. Then would it be accurate for me to
2 write "May 27 planned admission"?

3 A. Right.

4 Q. Okay. And what happened after that
5 planned admission?

6 A. So he was admitted to the surgery service.
7 He had surgery; not an emergency surgery at this
8 point. And they were able to further remove scar
9 tissue that was present, give him a permanent
10 abdominal wall.

11 Q. Was that surgery on the 28th; do you know?

12 A. I believe it was on the 28th.

13 Q. Okay. Go on. I'm just going to write
14 that there was a surgery.

15 A. Yeah. It may have been on the 27th, but I
16 believe it was on the 28th. The fistula that was
17 sort of the outgoing and ingoing parts together were
18 now able to be reattached into one tube and the
19 ostomy that he had was also able to be reattached to
20 his downstream intestinal tract, so that now he can
21 have regular bowel movements after that.

22 Q. Okay. So that surgery was successful in
23 terms of reattaching his intestines?

24 A. That's right.

25 Q. And what happened after that for

1 Mr. Perez?

2 A. So he was recovering, I believe, in the
3 ICU at UNM, and on the 28th to 29th there was
4 concern for altered mental status, is what it's
5 called. So he was confused, not able to communicate
6 well, not following instructions. And that -- I was
7 talking a little bit about that earlier. The
8 medical team couldn't quite figure out what was
9 wrong, why he wasn't recovering and waking up
10 appropriately after his surgery.

11 Q. I'm just going to make an indication here
12 on this chart. You said on the 28th and the 29th he
13 had altered mental status?

14 A. It was after his surgery that that
15 happened.

16 Q. Okay. Do you know the date?

17 A. So his -- I believe it was noticed on the
18 28th. I'm sorry that this is a little bit fuzzy,
19 but he saw psychiatry either on the 28th or the
20 29th.

21 Q. Okay. I'm going to put a plus here for
22 altered mental status, but I'm going to put it in
23 parentheses, because I think you're saying that you
24 know what happened and you think it was close to the
25 28th --

1 A. Right.

2 Q. -- but you can't say for sure that it was
3 that day or the next day; is that right?

4 A. Right.

5 Q. So I'm just putting on the legend down
6 here, a plus means altered mental status.

7 A. Right.

8 Q. Then what happened after that?

9 A. So neurology was asked to see him on the
10 30th.

11 Q. Okay.

12 A. And that was when he was diagnosed as
13 having subclinical status epilepticus, meaning a
14 seizure that isn't obvious, that is unrelenting.

15 Q. Okay. So did he have a witnessed
16 unrelenting seizure beginning then?

17 A. I believe it began with his altered mental
18 status. I think that's the assessment of his UNM
19 physicians, was this entire episode is actually one
20 seizure.

21 Q. Okay. Then I'm going to note on the
22 legend, again with an asterisk, means witnessed
23 seizure. And how long did that continue?

24 A. That continued until June 7.

25 Q. And I think you already testified about

1 the medications that Mr. Perez was administered to
2 try to stop that seizure from persisting; right?

3 A. That's right. So he was started on a
4 couple of different anti-epileptic medications. The
5 neurologist continued to watch that EEG recording of
6 his brain waves to see if they're making headway.
7 They weren't. They added a third anti-epileptic
8 medication, they withdrew one, and saw some
9 improvement. They started the medication called
10 lacosamide on June 2, and that's when they started
11 to see things turn around.

12 Q. During this period from the 28th of May
13 until the 7th of June, was Mr. Perez responsive?

14 A. No.

15 Q. He was completely unresponsive?

16 A. That's right.

17 Q. And was he in the ICU?

18 A. I believe he was in the ICU the whole
19 time.

20 Q. And this is when he had status -- this is
21 when he was diagnosed with status epilepticus?

22 A. That's right.

23 Q. So finally, you talked about the
24 lacosamide. Did he see more than one neurologist
25 during this time?

1 A. He did. So for a couple of different
2 reasons. One is: UNM is a teaching hospital, and
3 so you have broad teams of folks moving around; and
4 also because the neurology team that was on call for
5 managing the seizure also called in epileptologists,
6 meaning their colleagues that specialize in seizure
7 control.

8 Q. So Mr. Perez saw a neurologist while he
9 was at UNM. Do you know, is it your opinion -- do
10 you have an opinion as to whether or not Mr. Perez
11 was receiving regular neurological care when he
12 wasn't at UNM?

13 A. I believe that he was not.

14 Q. Okay.

15 A. And it's pretty clear, when he was
16 discharged on the 12th of June, the neurology notes
17 and the discharge summary from the hospital both
18 said that they intended for him to continue to see
19 the neurologists at UNM, but that didn't happen.

20 Q. That didn't happen. So he went back to
21 the prison hospital, then, on June 12; is that
22 right?

23 A. That's right.

24 Q. And he actually remained there for many
25 more weeks, didn't he?

1 A. He did. All the way through October.

2 Q. Okay. That's where you see in green here,
3 on October 3, the color changes, right, and he moves
4 somewhere else?

5 A. That's right.

6 Q. And do you know where he went after that?

7 A. Southern New Mexico, SNM.

8 Q. Southern New Mexico Correctional Facility,
9 SNMCF?

10 A. Thank you. Yeah.

11 Q. Throughout the period of 2013, did Mr.
12 Perez continue to have other internal medicine
13 related problems that you know of? Anything
14 notable?

15 A. Yes, absolutely. So the amount of
16 deconditioning that occurred over the course of this
17 year-long medical event is pretty amazing. At one
18 point he had lost 100 pounds because of the
19 inability to feed himself through his mouth and just
20 the metabolic exhaustion of your body trying to heal
21 itself from something this profound.

22 Q. Can you tell the jury when it was
23 recorded, if you know, that Mr. Perez had lost 100
24 pounds?

25 A. So in June of 2013. So not very long

1 after he got back from the hospital after this long
2 seizure was when his weight was noted to be 196.
3 And prior to his admission, it was 270. So actually
4 about 75 pounds.

5 Q. I'm going to just note on here in June
6 weight 196?

7 A. Right.

8 Q. Lost 75 pounds. Is that accurate?

9 A. Yes.

10 Q. And any other internal medicine related
11 issues that you have not already described come up
12 in 2013?

13 A. The way I categorize that time in 2013 is
14 really sort of trying to get back to whatever his
15 new baseline is going to be. So a lot of physical
16 therapy time. Again, he's learning now again to eat
17 by mouth and regaining strength and figuring out how
18 to use the sort of remodeled abdominal architecture
19 that he has now.

20 Q. Okay. That continued through the end of
21 the year?

22 A. That's right.

23 Q. All right. Now, let's take a look at the
24 third page of this exhibit, which reflects the first
25 three months of 2014, does it not?

1 A. That's right.

2 Q. Okay. Do you know -- do you have an
3 opinion as to whether or not Mr. Perez had any
4 witnessed, documented seizures in late 2013 that we
5 haven't talked about, or 2014?

6 A. He did. There is a note from his -- of
7 his visit with his physician that occurred on
8 January 11 that he had a seizure two weeks before
9 that. So it was more or less Christmastime, but we
10 don't know the exact date.

11 Q. Okay. Well, let's go back and look at
12 2013. So we know it was close to Christmastime?

13 A. Right.

14 Q. I'm just going to indicate -- is this
15 accurate if I indicate a witnessed seizure on
16 Christmas? I'll put parentheses. We don't know if
17 it was Christmas Eve or Christmas.

18 A. We just know it was about two weeks before
19 January 11.

20 Q. Okay. And that was while he was at
21 Southern?

22 A. Right.

23 Q. And then you said on January 11 there was
24 a note about his seizure activity. Is there
25 anything else notable about his seizure activity or

1 his treatment on January 11, 2014?

2 A. Yeah. This is actually, I think, an
3 interesting part that's a little bit hard to
4 understand. So on January 11 he saw his physician.
5 This is the first time that he has a known witnessed
6 seizure since starting on this new medication called
7 lacosamide. As far as anyone knows, he has been
8 seizure-free since leaving UNM Hospital back in
9 June. We're not certain of that, but that seems to
10 be -- that's the premise that his providers are
11 going on at this point.

12 Q. So we don't know, but it appears from the
13 record -- are you saying it appears from the record
14 that that was the belief of his providers?

15 A. That's correct.

16 Q. And those providers were not neurologists;
17 right?

18 A. Correct.

19 Q. Okay. Go on.

20 A. So the physician that he saw on the 11th
21 decided to change his seizure medication to one
22 called levetiracetam or Keppra, if you've heard of
23 that. And so he puts in an order -- let me just get
24 this exactly right. He puts in an order that day,
25 on January 11, to convert from lacosamide to Keppra.

1 The wording of the order is not very clear to read,
2 and part of that is because when you switch from one
3 seizure medication to another, by convention, if you
4 know that someone has seizures but aren't optimally
5 controlled, what you do is, you're on a medication,
6 you start the second medication, bring it up to
7 therapeutic dose, and then take the other one away.

8 The way that his physician wrote for the
9 medication to happen was to start the new medication
10 at the same time that he dropped this one by half,
11 and then he wanted to follow up with him to see what
12 to do with the second one.

13 That is probably a fine way to do it.
14 It's just not the way that I'm familiar with.
15 However, there was a medication error. So if you
16 skip in the medical record to the part that's called
17 the MAR, the medication administration record, you
18 can see that unfortunately his -- so without
19 starting the second medication, his lacosamide, the
20 new medication, was dropped by half and he was left
21 on that dose for a number of days. Then the Keppra
22 was started and the lacosamide was stopped
23 altogether. There is no other way to characterize
24 that except a medication error. And it may have
25 been just an honest mistake because reading these

1 kinds of instructions is difficult and tricky. That
2 is a big problem, especially with somebody who
3 already has seizures. You're withdrawing
4 medications too quickly without having sort of a
5 stable safety net under them, and that can often
6 precipitate what's called a seizure flurry, so a
7 whole lot of seizures in a short period of time.

8 Q. Dr. Brislen, I'm just going to write on
9 the legend a triangle means change in seizure
10 medication. Okay?

11 A. Yeah.

12 Q. And an E means medication error.

13 A. Okay.

14 Q. And so would it be accurate to reflect
15 your opinion if I put "Change in seizure medication
16 and medication error on January 11"?

17 A. Yes, with the understanding the medication
18 transition should probably have taken a couple of
19 weeks, so you could say the error was spread out
20 over time.

21 Q. So the error goes forward.

22 A. Yes.

23 Q. And how far does it go forward?

24 A. I would say through at least the 15th.

25 Q. Okay. I'm just going to draw an arrow

1 showing that the error goes through at least the
2 15th. And it's sort of complicated material, isn't
3 it, that you're covering?

4 A. Yeah.

5 Q. Are you saying -- correct me if I'm
6 mischaracterizing your testimony, but are you saying
7 that the medications were not properly titrated to
8 make the switch?

9 A. That's exactly right.

10 Q. Okay. And you testified earlier that Mr.
11 Perez was on -- I think you said he was on
12 approximately seven different seizure medications
13 over the course of the period that you've looked at?

14 A. He has been at different times on seven
15 different medications.

16 Q. Okay. So on January 11, this is one time
17 where he changed.

18 A. Right.

19 Q. And back at UNMH, when he had the
20 eight-day continuous seizure where he was
21 unresponsive, that's another time when he changed
22 multiple times; right?

23 A. That's true. Yeah.

24 Q. Okay. And so do you know why his seizure
25 medication -- I mean, let's go back. When he was in

1 the hospital, why were his seizure medications
2 changed?

3 A. During that long seizure?

4 Q. Yes.

5 A. Because it was urgent that we find a
6 medication that would bring him out of seizure
7 status and back to normal. And so lots of different
8 things were tried. First line, second line, third
9 line, you know. Kind of pulling all of your cards
10 out of your deck to try to find something that
11 works.

12 Q. Is that because the seizure medications
13 that he was on weren't working?

14 A. That's right. So you know, something to
15 think about in big-picture seizure treatment, if you
16 think about community-dwelling people that have
17 seizures --

18 Q. And when you say community-dwelling
19 people, you mean people who aren't in prison?

20 A. That's right. And the reason I mention
21 that is because community-dwelling people have
22 oftentimes social supports around them that serve as
23 their witnesses, and I don't know what Mr. Perez'
24 social structure was for people that might have been
25 able to know when he was having a seizure, what his

1 witness structure is like. But if you think about
2 what I'm calling community-dwelling people having
3 seizures, sometimes optimal control of your
4 seizures, you may still have seizures once in a
5 while, and that doesn't necessarily mean that you
6 have to change medications, but ideally in working
7 with a neurologist, you are able to fine-tune to
8 find sort of your best, most positive place. There
9 is really no reason to change medications unless
10 you're unable to tolerate your current medication
11 because of side effects or you're having recurrent
12 seizures.

13 So the case that you were just describing,
14 he had one long seizure, it was very hard to -- it
15 was refractory to treatment; lots of different
16 things were tried, until they finally discovered one
17 that did seem to work, and that became his new
18 anti-epilepsy therapy.

19 Q. Okay. And to be clear, in January of
20 2014, when you say Mr. Perez' seizure medication was
21 changed again, was he seeing a neurologist?

22 A. No.

23 Q. Okay. Do you know why his seizure
24 medication was changed on January 11?

25 A. I believe it's because -- and as reflected

1 in his physician note it's implied that it's changed
2 because of the seizure he reported that had happened
3 about two weeks prior.

4 Q. Okay. And so that medication error then,
5 where you say the titration wasn't done right,
6 continued until about January 15th?

7 A. The reason I say that is because his --
8 the first thing that was done wrong, different than
9 the instructions, was that the lacosamide was cut in
10 half without having any Keppra being administered at
11 the same time.

12 The second thing that went wrong was that
13 when the Keppra was started four days later, his
14 lacosamide was stopped altogether, and that wasn't
15 correct, either. He was supposed to stay on that
16 lacosamide. The way the order was written, he would
17 have stayed on both medications together for a
18 month, and that didn't happen. So you could read
19 it, you know, as a longitudinal error or two
20 distinct errors or whatever, but whatever it was
21 predisposed him, put him at great risk for either
22 seizure flurry or recurrent seizures.

23 Q. Okay. So he was actually, then, according
24 to the order, supposed to remain on both seizure
25 medications until February 11; is that right?

1 A. I believe so. I mean, the order says "for
2 30 days." The follow-up appointment that was
3 arranged with his physician -- I don't recall when
4 he was going to follow up to make sure everything
5 was going okay. So there's two mechanisms there.
6 The medications are written to last a certain amount
7 of time, and the fail-safe is: I'm going to see you
8 back in a couple of weeks. It was a two-week
9 follow-up-ish, we'll see how things are going.

10 Q. Okay. Now, when you say this is a
11 medication error, do you know what, if any,
12 consequences could result from that? Well, you said
13 errors, result from those errors.

14 A. What you would be worried about is lots of
15 seizure burden occurring in a short amount of time,
16 so many seizures happening.

17 Q. Okay. So there is then a period of time
18 after the medication errors when you would worry
19 about seizure activity?

20 A. Yes.

21 Q. You'd worry more than you otherwise would?

22 A. Right.

23 Q. How long is that time period?

24 A. It's really -- it's impossible to know. I
25 mean, it's going to be very individualized, how long

1 the insult of having your medication sort of too
2 suddenly adjusted might last, but I can't estimate.

3 Q. Okay. You just know for some time after
4 January 15, Mr. Perez -- is it accurate to say that
5 he was at risk for even more seizure activity?

6 A. That's correct.

7 Q. Okay. And did Mr. Perez, in fact -- do
8 you know Mr. Perez had any witnessed seizure during
9 this interval?

10 A. I'm pretty sure that he had another
11 seizure on February 8 or prior to February 8.

12 Q. How do you know that?

13 A. Because there's further notes from his
14 physician that they increased his Keppra -- this is
15 the new medication -- was increased on February 8
16 and then in follow-up to that, the comment is made,
17 "No further seizures since the increase."

18 So my read into that is: He did have a
19 seizure that triggered further adjustment of his
20 medications on the 8th of February, and then --

21 Q. So let's slow down.

22 A. Sorry.

23 Q. I'm trying to keep up with you, Dr.
24 Brislen.

25 A. Yeah. Yeah. Yeah.

1 Q. Is it accurate, then, for me to note a
2 change in seizure medication on February 8?

3 A. Yes. That's perfect.

4 Q. And was there a medication error at that
5 time?

6 A. No, not that I know of.

7 Q. And it's your belief, it's your opinion,
8 that sometime in the lead-up to February 8 that Mr.
9 Perez had seizure activity; is that right?

10 A. Probably.

11 Q. And is that between January 16 and
12 February 8?

13 A. That's my understanding.

14 Q. Okay. So I'm going to indicate on here,
15 this is accurate, what would be -- what is your
16 opinion as to what happened in that time? Would it
17 be accurate for me to say "probable seizure
18 activity"?

19 A. That's a perfect way to phrase that.

20 Q. Okay. So I'm going to just make a
21 squiggly line here on the legend that says "probable
22 seizure activity." And we haven't gone into detail
23 on it, but you explained to the jury earlier, with
24 each of these seizures, witnessed or not, is there a
25 post ictal period?

1 A. Yes.

2 Q. And tell me again what that is.

3 A. A post ictal period is a period of time
4 with altered mental status or incomplete cognition
5 or awareness. Sometimes post ictal periods can
6 include difficulty controlling mood, feelings,
7 behavior.

8 Q. Okay. And I think you said that there is
9 a later note. Do you know, was that later note that
10 you talked about, saying that there was no known
11 seizure activity -- do you know when that was?

12 A. That was in April. There is a physician
13 note in which he inquires and there is -- it's
14 written down, "No seizure since Keppra adjustment,"
15 which we can take to mean no witnessed seizures
16 since February 8.

17 Q. Okay. I don't have April on this
18 calendar.

19 A. Right.

20 Q. But I'm going to write here after March --
21 you tell me if it's accurate for me to say April
22 note documenting -- well, you can't document
23 seizures that weren't witnessed; right?

24 A. Right.

25 Q. But there is an April note that says no

1 witnessed or known?

2 A. The note says, "No seizures." I read that
3 to mean no witnessed seizures.

4 Q. Okay. I'm going to say, "No witnessed
5 seizures." And you described earlier, did you not,
6 that -- I just want to be clear. These records that
7 you've reviewed only reflect witnessed seizures;
8 right?

9 A. Right.

10 Q. Okay. So we don't know about the
11 unwitnessed ones.

12 A. Right.

13 Q. Is there anything else -- oh, you know,
14 there is one thing I want to ask you about, going
15 back to 2013, and we haven't talked about every
16 single ambulatory or assistive device that Mr. Perez
17 has ever used; right?

18 A. That's right.

19 Q. But do you know if in 2013 Mr. Perez was
20 issued a walker that had handle brakes?

21 A. Yes, that's right.

22 Q. Do you know when that happened?

23 A. That happened in October. So his --
24 basically when he got out of UNM Hospital for the
25 last time, he was classified as what's called

1 modified -- I'm sorry, moderate assist, which means
2 he can only perform 50 percent of the effort of
3 standing from sitting or walking. He needed a human
4 being to hold him up.

5 Q. Okay. So that's October 2013, he is
6 moderate --

7 A. No, no. Sorry. This is June. June of
8 2013, he's moderate assist.

9 Q. Okay. I'm going to X that out. That's
10 when his weight is 196?

11 A. That's right.

12 Q. He's moderate assist. So he needs a
13 person to hold on to. I'm going to write that on
14 here. Is that accurate, Dr. Brislen?

15 A. That's correct. In September, then he is
16 reclassified -- this is a physical therapy
17 diagnosis -- as modified independent. And what that
18 means is: He's progressed to the point where he can
19 get around without another person's help, but the
20 modification is a piece of equipment. So he's not
21 fully independent. He can't walk by himself, and
22 the truth is, he's never gotten better than that in
23 any of the physical therapy notes we've seen. But
24 now he's gotten back to this modified independent
25 state.

1 Q. So is it accurate, Dr. Brislen, if I write
2 under September 2013, "modified independent," and if
3 I say, "Needs -- needed equipment," would that be
4 accurate?

5 A. Yes.

6 Q. Okay. I'm going to write that then. Go
7 on.

8 A. So in September of 2013 -- and I'm sorry,
9 I didn't note the exact date -- a wheelchair and a
10 walker are ordered for him.

11 Q. Okay. Both a wheelchair and a walker?

12 A. That's correct. And on November 8, so two
13 months later, the walker is delivered.

14 Q. Okay.

15 A. And he gets it -- he receives it on the
16 12th. He signs a -- you know, a medical equipment
17 check-out form on October 12. I'm sorry. Hold on.
18 November 12. November 12, that he is now in
19 possession of this walker with hand brakes.

20 Q. So I'm going to just include on the legend
21 a W, meaning walker delivered. Okay?

22 A. Okay.

23 Q. Does that correspond with your testimony?

24 A. Um-hum.

25 Q. And you said that was on November 12?

1 A. Um-hum.

2 Q. So I'm going to put that W on November 12.

3 And at some point he was also delivered a
4 wheelchair; is that right?

5 A. That's right.

6 Q. Do you know the date of that?

7 A. I don't.

8 Q. And so this walker that was delivered for
9 which he acknowledged receipt on November 12, 2013,
10 that's the equipment that was prescribed to him;
11 right?

12 A. Right.

13 Q. That's the equipment that he needed based
14 upon the physical therapy recommendation in 2013;
15 right?

16 A. That's right.

17 Q. Okay. And so let's go back to 2014. So
18 in 2014, do you know whether Mr. Perez still had
19 that same walker that he received in November of
20 2013?

21 A. As far as I can tell based on the medical
22 records, he still had it.

23 Q. Okay. And prior to that, had he been
24 ordered other walkers?

25 A. Yes.

1 Q. Okay. And other devices to assist him?

2 A. Yes.

3 Q. How would you characterize -- and you've
4 talked about Mr. Perez' seizures in the early part
5 of 2014; right?

6 A. Right.

7 Q. How would you characterize Mr. Perez'
8 general health from January to March of 2014?

9 A. I would characterize it as probably close
10 to his baseline, fairly debilitated and still in
11 some degree of recovering from his acute illness.

12 Q. So would it be accurate if I write,
13 "Fairly debilitated and recovering"?

14 A. Sure.

15 MS. ARMIJO: Your Honor, I'm going to
16 object at this point to "probably." Witnesses are
17 not allowed to guess.

18 THE WITNESS: I'm sorry.

19 MS. ARMIJO: If she has an idea or can
20 state an opinion -- but she's stating probably, so I
21 would move to strike the answer.

22 THE COURT: Well, I think that if she
23 can't testify to a reasonable degree of medical
24 probability, then she probably shouldn't be offering
25 a medical opinion here.

1 MS. FOX-YOUNG: Judge, I agree.

2 BY MS. FOX-YOUNG:

3 Q. And Dr. Brislen, I only want to know what
4 you can say with a reasonable degree of medical
5 certainty about Mr. Perez' general health from
6 January to March of 2014.

7 A. Okay. Mr. Perez has a walker that he is
8 able to use to ambulate somewhat, which is an
9 improvement on where he was a number of months
10 before that. He has regained all of the weight that
11 he lost and then some, which unfortunately means his
12 diabetes is not in as good a condition as it was
13 before, but it reflects his appetite is back and his
14 general strength has improved. He remains
15 physically fragile, very prone to falls, and with
16 chronic pain, and now pretty profound digestive
17 issues which I think impact his quality of life and
18 probably -- I'm sorry. Impacts his quality of life.

19 Q. Let's stop there, because I want to
20 capture some of your testimony here. He'd gained
21 the weight back; is that right?

22 A. That's right.

23 Q. Okay. I'm going to just write that he had
24 gained the weight back. I think you said it's your
25 opinion that he was -- did you say he was -- his

1 state was generally fragile? Or what is your
2 opinion generally about his physical state?

3 A. So yes, fragile, and also at baseline.

4 Q. Okay. So I'm going to write "fragile and
5 at baseline." And can you tell the jury what you
6 mean by "at baseline"?

7 A. So this gets back to when I say he's never
8 been certified to be more mobile than modified
9 independent, meaning he is going to need a walker if
10 he's going to ambulate safely I think for the rest
11 of his life.

12 Q. And you said something about the state of
13 his diabetes at the time.

14 A. That's right. He required accelerated
15 medication treatment at this point which goes along
16 with weight gain to the point of obesity.

17 Q. And is there a way that you can
18 characterize his diabetes specifically at this time?
19 You said he required accelerated medication.

20 A. Right. So when he lost the weight during
21 his acute illness, he didn't require medication for
22 his diabetes and he now requires medical treatment
23 to keep his blood sugars within a safe bound.

24 Q. Okay. I'm just going to say "requires
25 medical treatment for diabetes"; is that accurate?

1 A. Sure.

2 Q. And you've talked specifically about
3 changes in his seizure medication. And you
4 testified that it is your opinion that he had
5 probable seizure activity during this time. Is it
6 accurate to say that he had probable seizure
7 activity through March, or do you know?

8 A. I don't know.

9 Q. Okay. And we've already reflected on the
10 calendar what you do know about his seizure
11 activity; is that right?

12 A. That's right.

13 Q. And can you tell the jury how -- did you
14 say he was in chronic pain at this time?

15 A. Yes, that's true.

16 Q. What can you tell me about his pain?

17 A. So at this point we know, based on
18 complaints that he makes specifically to nursing
19 staff in the medical record and to his physicians,
20 that he has lot of pain. That's abdominal pain
21 primarily and also leg pain; in particular, one of
22 his knees bothers him quite a lot. He is taking
23 hydrocodone every day three times a day, and also
24 Neurontin, which is a nerve pain medication.

25 Q. Okay. I want to separately capture what

1 your opinions are about his medications.

2 A. Okay.

3 Q. Is it accurate, Dr. Brislen, if I say he
4 had chronic abdominal and leg pain at this time?

5 A. That's true.

6 Q. Do you have any opinions that you haven't
7 already stated with respect to this time period
8 about Mr. Perez' neurological state?

9 A. I know that he continues to receive sleep
10 aids like doxepin. I'm sorry, I don't want to jump
11 into medication. He continues to receive
12 medications for sleep and follow with mental health
13 providers. He also receives medication for
14 agitation and anxiety. So those all contribute.

15 Q. So I think this is a good time for us to
16 talk, then, about your opinions with regard to the
17 medications that Mr. Perez was receiving at this
18 time and their effects.

19 A. Okay.

20 Q. So what opinions do you have about the
21 medications that Mr. Perez was receiving in January
22 to March 2014? Start there.

23 A. So I'm going off of a list of medications
24 that I took from March of 2014. And besides that
25 adjustment on February 8 that we talked about and

1 the change of medications on the 11th, I think these
2 were fairly stable. But I'm not -- there may have
3 been, you know, insignificant adjustments during
4 this period of time.

5 Q. So I'm going to say March 2014
6 medications.

7 A. Right. Okay. So I've broken these
8 conceptually into two groups: The psychoactive
9 medications and the nonpsychoactive medications,
10 just so we can think about --

11 MS. ARMIJO: Excuse me, Your Honor. I'm
12 going to object to any testimony without laying a
13 foundation. I believe she's an expert in internal
14 medicine, but to talk about the effects of
15 medications is a different specialty.

16 THE COURT: Well, why don't you lay some
17 foundation, see if she's got enough expertise to
18 opine on this to a reasonable degree of medical
19 certainty. If she can't go that far, then probably
20 she shouldn't be testifying about the effects of
21 medicine.

22 MS. FOX-YOUNG: Thank you, Your Honor.
23 And I don't think that's the question on the table
24 at this point, but before I elicit any testimony
25 with regard to the effects, I will lay some

1 foundation.

2 THE COURT: All right.

3 BY MS. FOX-YOUNG:

4 Q. Dr. Brislen, you were saying that you --
5 in your consideration of Mr. Perez' medical history,
6 I think, were you saying that you grouped the
7 medications that he was prescribed in March of 2014
8 into categories?

9 A. That's right.

10 Q. Okay. Tell me what categories.

11 A. So I call it psychoactive and not
12 psychoactive.

13 Q. Okay.

14 A. And that would be a way in clinic, for
15 example, that you might, as a physician, tease out
16 what kinds of side effects might be coming from
17 certain medications or what kinds of medications you
18 would need to be careful with.

19 Q. Dr. Brislen, don't tell me anything about
20 side effects or effects yet.

21 A. Okay.

22 Q. All I'm asking you to tell the jury first
23 is what medications you know or it's your opinion
24 that Mr. Perez was prescribed at that time in March
25 of 2014.

1 A. All right. So under the label in my head
2 of psychoactive, he was taking Haldol, hydrocodone,
3 Neurontin, Benadryl, Keppra -- that's his new
4 seizure medication -- and doxepin.

5 Q. Is that seven different medications?

6 A. Oh. Six.

7 Q. Okay. Would it be accurate if I say six
8 psychoactive medications in March of 2014?

9 A. Sure.

10 Q. Okay. And what other categories of
11 medications was he receiving?

12 A. So I've lumped these together under the
13 not-psychoactive label, and he was taking
14 omeprazole, lactulose, vitamin D, lisinopril,
15 metoprolol, fibromax, docusate, doxazosin, and
16 that's it. Eight.

17 Q. So he was taking eight medications which
18 you classify as not psychoactive.

19 A. Not psychoactive.

20 Q. Okay. And do you know, Dr. Brislen, the
21 date that Javier Molina died?

22 A. I actually don't, off the top of my head.
23 It is early March 2014.

24 Q. Okay. The eight -- and maybe it's hard --
25 maybe you need to take them one by one. But the

1 eight medications that you just listed -- what are
2 those used to treat?

3 A. So three of them -- I'm sorry, two of
4 them. Three of them are for gastrointestinal
5 health. So he's on three different stool softeners
6 and laxatives in order to make sure that his
7 intestines continue to move soft stool through them
8 to reduce the risk of him reobstructing.

9 Two of them are high blood pressure
10 medications. One is for acid reflux related, again,
11 to his GI injuries. One is an antidepressant. One
12 is a medication for prostate, bladder obstruction;
13 and then vitamin D is a supplement for bone health.

14 Q. Okay. So you listed 14 different
15 medications. Are any of these 14 medications
16 medications that you did not learn about in your
17 extensive training in medical school and your
18 residency?

19 A. No, I'm familiar with all of these
20 medications.

21 Q. Of these 14 medications, are there any
22 that you have not at some time either prescribed or
23 done maintenance care with your own patients?

24 A. I have never used doxepin personally.
25 That's it. I've used all the rest of them.

1 Q. And when you say you've used them, does
2 that mean that you have prescribed them or have
3 patients who are receiving them being treated?

4 A. Yes, exactly.

5 Q. In your clinic or at the hospital?

6 A. Right.

7 Q. And what is doxepin for?

8 A. It's an older -- it's called a tricyclic
9 antidepressant. For Mr. Perez it was used as a
10 sleep aid that also, when you use medications like
11 this for patients with chronic pain, it acts as a
12 sleep aid and also an adjunct medication for pain
13 control.

14 Q. Okay. And for each of these 14
15 medications, are you familiar with the reasons to
16 use them for -- in treatment?

17 A. Yes.

18 Q. And are you also aware of the side effects
19 that they have?

20 A. Yes.

21 Q. And I think you said there was one of the
22 14 medications that you haven't used. Is there a
23 reason that you haven't prescribed it or seen it
24 prescribed?

25 A. Doxepin is a close relative of another

1 medication called amitryptiline, and I have used
2 that preferentially because I'm used to it. My
3 understanding is they're very closely related, but
4 that's the reason why, there is another easily
5 available alternative.

6 Q. Okay. So this is not a preferred
7 medication, the doxepin?

8 A. For me. Right. I mean, formularies
9 change, things like that. So, yeah.

10 Q. And is the information that you have about
11 the treatment used and the side effects of these
12 medications based upon your training and clinical
13 experience?

14 A. Yes, it is. I'd like to add to that that
15 oftentimes, beside side effects, drug interactions
16 are one of the things that we have to be careful
17 about, and that's something that we all -- that
18 nobody can manage that in their own heads, so we
19 tend to use textbooks and on-line resources and
20 things like that to tease those out.

21 Q. Okay. And so we've talked about treatment
22 and side effects. With respect to the drug
23 interactions, what do you rely on to formulate any
24 opinions about drug interactions between these 14
25 drugs?

1 A. So for these 14 drugs I used the same
2 clinical resource that I use for my patients, which
3 is called Medscape, which is an on-line tool where
4 you submit names of medications and it will tell you
5 if they contradict with each other or they have an
6 interaction. Those can be lots of different
7 flavors. So if two medications interact either/or
8 the other one might be amplified or decreased in its
9 ability to work, or one of them might -- if they're
10 processed using the same enzymes in your body,
11 they'll, like -- the duration of action might get
12 stretched out or shortened, depending upon the
13 metabolic effects and things like that. So you plug
14 in names of medications into this tool and it will
15 tell you these two shouldn't go together; these two
16 can, but be careful. That sort of thing.

17 Q. You talked about Medscape as a tool that
18 you use --

19 A. That's the one I tend to use.

20 Q. Okay. Is the ordinary practice of doctors
21 in the community to use a tool to determine whether
22 there are drug interactions?

23 A. Yes.

24 Q. Dr. Brislen, can you tell me what the side
25 effects of the six -- and you're calling them

1 psychoactive medications -- are?

2 MS. ARMIJO: I still object based on
3 foundation.

4 THE COURT: Well, I think she has enough
5 expertise to be helpful to the jury, so overruled.

6 BY MS. FOX-YOUNG:

7 Q. And you can tell me medication by
8 medication.

9 A. Okay.

10 Q. Or tell the jury.

11 A. So Haldol is an old antipsychotic. It has
12 a lot of side effects of GI issues, nausea, as well
13 as sedation; makes you very sleepy, feel sluggish,
14 feel fuzzy-headed.

15 Hydrocodone is a pain medication, and that
16 one classically causes itching, constipation, also
17 fatigue and sedation.

18 Neurontin is the same thing as gabapentin,
19 which is a pretty common medication. That's the
20 nerve pain medication. It's actually classified --
21 it's an antiseizure medication, but we've learned
22 that it's good for nerve pain, and that's what we
23 use that for primarily now. That one has profound
24 sedating effects.

25 Benadryl. Oftentimes we use that for

1 sleep. It's an antihistamine, but it's so sedating
2 that we use that side effect as a therapeutic
3 benefit.

4 Keppra or levetiracetam. That's the new
5 seizure medication that he was put on on January 11.
6 It causes the same thing: Fatigue, sedation, and
7 nausea or stomach upset classically.

8 Doxepin is an antidepressant that helps
9 with pain, but is -- again, it's one of the
10 medications where we use the fatiguing or the
11 sedating side effect for therapeutic benefit, which
12 is why we give it at bedtime. That's it.

13 Q. So Dr. Brislen, I documented here on this
14 exhibit side effects of nausea, sedation, itching,
15 fatigue, and profound sedation?

16 A. Right.

17 Q. Does that accurately capture the overall
18 side effects of these drugs?

19 A. It does.

20 Q. Now, I know you testified that
21 sometimes -- is it true that sometimes there is
22 overlap between side effect and the intended effect
23 of the drug?

24 A. Yes.

25 Q. Okay. And is it true that one or more of

1 these medications was prescribed to Mr. Perez for
2 sedation?

3 A. Correct.

4 Q. Okay. So I'm listing sedation and
5 profound sedation and fatigue as side effects, but
6 is it your testimony that Mr. Perez was receiving
7 some of these medications because he needed to
8 sleep?

9 A. Yes.

10 Q. Now, do you have an opinion -- and let's
11 talk about the side effects, if there are any
12 notable, of the eight other medications that you
13 know that Mr. Perez was taking in March of 2014.

14 A. Those side effect are going to be minimal,
15 if any. For some people taking metoprolol, which is
16 a classic, very common blood pressure medication,
17 can cause some sleepiness. The stool softeners have
18 an obvious side effect of diarrhea if they're
19 overused or if they're not absorbed consistently.
20 And blood pressure medications can make your blood
21 pressure go too low depending on the circumstances.
22 But otherwise, nothing substantial.

23 Q. Okay. I'm not going to add anything
24 because it's your opinion that there are no
25 substantial side effects at least documented for Mr.

1 Perez; right?

2 A. Right.

3 Q. And I'm not going to write fatigue again.
4 I think you said that there were -- is it true that
5 there are at least four or five medications that he
6 was taking that cause fatigue?

7 A. Yes.

8 Q. Okay. Do you have an opinion as to
9 whether these 14 medications taken together had any
10 dangerous interactions or notable interactions?

11 A. Yes. So -- and I'm sorry that I didn't
12 bring the list with me. But when you plug this list
13 of medications, especially the first six, into a
14 medication interaction checker, the important things
15 that surface out of that are, one, Haldol is very
16 difficult to mix with any other medications because
17 it changes the way electricity gets conducted in
18 your heart. And so you just have to monitor people
19 very carefully with that one. That's one of the big
20 red flags. You should be checking an EKG to make
21 sure you're not putting people in cardiac danger
22 with this one.

23 But the others are interesting because
24 their metabolism is shared by similar enzymes in
25 several instances, meaning that even though he may

1 take doxepin and Benadryl for sleep, that's helpful.
2 The other sedating medications are going to get
3 absorbed in a way and metabolized in a way that's
4 unpredictable. So there's a lot of warnings that
5 surface when you look at this medication panel that
6 says: Be very wary of sedation which for a
7 community-dwelling person would mean I would have a
8 conversation with them about "You should not drive
9 when you take these medications. You probably
10 shouldn't do complex tasks, those kinds of things."

11 Q. Okay. Dr. Brislen, would it be accurate
12 for me to say under interactions that sedation is at
13 issue here?

14 A. It would be, yes. That would be the
15 primary concern to me.

16 Q. And I won't list all the others because
17 that's your primary concern. I'm going to put
18 sedation there. And those are already there for
19 side effects. But do you have an opinion as to
20 whether or not it's a greater concern given the
21 potential drug interactions than it would be without
22 interaction, if that makes sense?

23 A. Yes, I do. I think that compounds the
24 effect.

25 Q. Okay. Do you have any opinions as to what

1 Mr. Perez' level of alertness was in March of 2014,
2 given these 14 medications he was taking?

3 A. Aside from just understanding the
4 prescriptions that he was on, I don't.

5 Q. Okay. You talked about driving. Do you
6 have any opinion as to Mr. Perez' ability to perform
7 complex tasks in March 2014 given his medical
8 condition and the medications he was on?

9 A. Likely diminished.

10 Q. Diminished. Okay. Do you have any
11 opinion as to -- I think you've covered it,
12 Dr. Brislen. Now, I'm going to note on here,
13 because it's in evidence, that Javier Molina died on
14 March 7. And I'm going to put that on this legend
15 as JM, Javier Molina, died. And now, Dr. Brislen,
16 I'd like to talk to you about the remainder of 2014
17 and Mr. Perez' medical condition during that time,
18 and also 2015 and January 2016. So from April 2014
19 to January 2016, were there any notable changes in
20 Mr. Perez' general health?

21 A. So we know that he continued to struggle
22 with mobility, which isn't a surprise. Over the
23 course of that time he went through at least one
24 more cycle where he had a wheelchair and a walker,
25 attempted to transition to a walker and a cane, fell

1 when using the cane, went back to a wheelchair, then
2 again a walker. That kind of progresses. There's
3 lots of comments in the notes from his provider
4 about when he's ambulating without the use of a
5 walker, how slow and painful that process is for
6 him.

7 Q. Okay. And is this the same cycle that
8 you've already testified about seeing over the
9 course of 1992 to 2016?

10 A. That's right.

11 Q. Is there anything notable about Mr. Perez'
12 seizure activity in January 2016?

13 A. January of 2016. So --

14 Q. Let me ask you this.

15 A. I'm with you.

16 Q. Is there anything notable, Dr. Brislen,
17 about Mr. Perez' antiseizure medications which were
18 prescribed in January of 2016?

19 A. Right. So again, this is one of the
20 overlap issues where in January of 2016, actually
21 starting October the year before, Mr. Perez was
22 prescribed a medication called oxcarbazepine, which
23 is an antiseizure medication just like gabapentin,
24 which we talked about before. He had been taking it
25 in 2014. This is a similar medication used for

1 neuropathic pain, meaning used for pain that's
2 caused by nerves. He was put on that medication in
3 October for pain control.

4 Q. Is there -- are you talking about October
5 of 2015?

6 A. Correct.

7 Q. So in October of 2015, Mr. Perez had a
8 medication change?

9 A. Yes. You know, medically, he's a really
10 complex patient and there's a lot of medication
11 titration that happens kind of all the time. It's
12 kind of like background noise. His providers are
13 always trying to find a way to get him better pain
14 control, always trying to optimize the control of
15 his diabetes, blood pressure, those kinds of things.
16 So those are pretty minimal, and I didn't even make
17 specific note of things that I didn't think were
18 remarkable.

19 Q. And you have not documented for the jury
20 the many, many times that there have been medication
21 changes; right?

22 A. Correct.

23 Q. We just talked about a couple of them.

24 A. Correct.

25 Q. Okay. Go on.

1 A. So he started taking this new medication
2 in October, and pretty quickly said that he didn't
3 like it; it wasn't as helpful for his pain as it had
4 been. Come January, his physician decided to try a
5 different medication for him and stopped his
6 oxcarbazepine suddenly before they substituted
7 another medication. That is something we could flag
8 on the calendar as a medication error.

9 Q. And when was that, Dr. Brislen?

10 A. That happened on January 21.

11 Q. Of 2016?

12 A. Correct.

13 Q. I'm going to show you the last page of
14 this exhibit, which is February 2016, but I'm going
15 to write at the top of it, because we don't have
16 January -- you said January 25?

17 A. 21.

18 Q. 21st. There is a medication error?

19 A. Right.

20 Q. Okay. Tell the jury about that error.

21 A. Okay. So this is a prescribing mistake.
22 So oxcarbazepine -- I'm going to call it Trileptal
23 because that's an easier word. That's the brand
24 name. So Trileptal being used for pain control in
25 anyone, anyone in this room today, part of what it

1 does to your brain that helps it increase the pain
2 has the side effect of decreasing your seizure
3 threshold, meaning you're covered because you're
4 taking this medication, but the ease with which your
5 brain can sort of go a little haywire and have a
6 seizure, it gets much easier. You're suddenly on a
7 slippery slope. So if I were prescribing this
8 medication to a patient, I would have a serious
9 timeout conversation as part of our visit. "This
10 medication might help with your pain. If you don't
11 like it, you cannot stop it suddenly. Because then
12 you're left again flying without a safety net,
13 predisposed to seizures."

14 And this is for anyone, not just people
15 who already have seizures.

16 Q. So a person on this medication who is not
17 an epileptic would be at risk for increased seizure
18 activity if the medication were stopped?

19 A. That's right. If it were stopped
20 suddenly.

21 Q. And is that what happened on January 21st?

22 A. That is. That is. And Mr. Perez had been
23 taking 600 milligrams twice a day, which was maximum
24 dose. So he was on a high dose of a medication that
25 suppresses his own defenses against seizures, and

1 then that medication was withdrawn suddenly. That's
2 a red flag and something that stood out to me in his
3 medical chart as another period of time where we
4 would see very likely seizure activity.

5 Q. So Dr. Brislen, would it be accurate for
6 me to say after January 21, very likely seizure
7 activity?

8 A. Yes.

9 Q. And can you characterize Mr. Perez'
10 general health in February 2016?

11 A. I would say apart from this medication
12 change and the concern that I have for that
13 precipitating seizures, it's unchanged from
14 previous.

15 Q. And so --

16 A. The same mobility issues, same digestive
17 issues, hypertension, diabetes, pain control.

18 Q. Okay. So then is it accurate to say that
19 your testimony with regard to your opinions about
20 Mr. Perez' general health in March of 2014 would
21 also apply to his general health in February of
22 2016?

23 A. Yes. I think that's true.

24 MS. FOX-YOUNG: Okay. Your Honor, just a
25 moment?

1 THE COURT: Certainly.

2 MS. FOX-YOUNG: Your Honor, I'd like to
3 show the witness an exhibit that's already in
4 evidence, which is Government's 770.

5 THE COURT: All right.

6 BY MS. FOX-YOUNG:

7 Q. And while we're waiting for that, Dr.
8 Brislen, would it be accurate if I mark this exhibit
9 to say that Mr. Perez had the same general health as
10 in March of 2014?

11 A. I think that's fair to say.

12 Q. Okay. So I'm not going to write
13 everything on this page that we already looked at.
14 But I'm going to say "as in March 2014."

15 All right. Now, Dr. Brislen, is this a
16 document that you've ever seen?

17 A. I have seen documents that look similar to
18 this, but I don't know if this is the same as
19 something I've seen.

20 Q. Well, do you see here at the top where
21 it's titled "Offender physical location history for
22 Billy Vidal Cordova, Jr."?

23 A. Okay. So I don't think I've seen this
24 before.

25 Q. Okay. And if we would just look at this

1 area covering 2016, do you see this entry that I am
2 underlining -- I'm sorry, somebody else's
3 underlining. Do you see this entry that I am
4 underlining, circling?

5 A. Is that January 21 or --

6 Q. January 21.

7 A. Okay.

8 Q. Now, you can't read it because I marked it
9 up. Now it's highlighted. The January 21 entry
10 showing N3BX107. Do you see that?

11 A. Yeah.

12 Q. And this is Billy Cordova's location
13 history. Can you tell if Mr. Cordova was moved on
14 January 21, 2016, to N3BX107? If you don't know,
15 it's okay.

16 A. I can't tell if this is where he -- so if
17 you look at January 7 to January 21, I see -- okay.
18 So could you repeat the question? From January 7 to
19 January 21 it looks like that corresponds to N3B and
20 then starting January 21 you see N3A.

21 Q. And so it looks likes Billy Cordova --
22 then this entry changes. Does it look like he's
23 moved on January 21, 2016 to N3AQ102?

24 A. Yes, it does.

25 Q. And this is on January 21, 2016; right?

1 A. Right.

2 Q. Thank you. I don't need Government's
3 Exhibit 770 anymore. If we can just look at the
4 Elmo again.

5 So that is actually the same day where you
6 note a medication error? Is that right? January
7 21, 2016?

8 A. That's right.

9 Q. And after that time, very likely seizure
10 activity for Mr. Rudy Perez?

11 A. That's right.

12 Q. And if you'd like, I can show you Mr. Rudy
13 Perez' location history. Are you aware that on
14 January 21 of 2016, Rudy Perez was in a cell next to
15 Billy Cordova?

16 A. No, I didn't. I mean, I wondered if
17 that's why we were looking at that, but I don't know
18 that.

19 MS. FOX-YOUNG: Your Honor, I'll pass the
20 witness. Oh, actually, I'm sorry. I'd like to move
21 the admission of Defendants' FY.

22 THE COURT: Any objection, Ms. Armijo?

23 MS. ARMIJO: No objection.

24 THE COURT: All right. Anybody else have
25 any objection? Not seeing or hearing any,

1 Defendants' Exhibit FY will be admitted into
2 evidence.

3 (Defendants' Exhibit FY admitted.)

4 THE COURT: All right. Do any of the
5 other defendants have any direct examination of Dr.
6 Brislen?

7 MS. DUNCAN: No, Your Honor.

8 THE COURT: Not seeing any, Ms. Armijo, if
9 you have cross-examination, you may do so at this
10 time.

11 CROSS-EXAMINATION

12 BY MS. ARMIJO:

13 Q. Good afternoon, Dr. Brislen.

14 A. Hi.

15 Q. Now, you previously testified before the
16 judge in this case, and was that in December 2017?

17 A. November or December. I can't remember.

18 Q. All right. And what have you done in this
19 case since you have testified in preparation for
20 your testimony today?

21 A. I prepared a time line of medical events
22 based on a synthesis of the medical records, and
23 reviewed my notes in preparation to come here today.

24 Q. Okay. So you created the time line. Is
25 that part of the notes that the United States just

1 received for the first time today?

2 A. Yes. I mean, and little scribblings,
3 notes that I made on the side.

4 Q. Okay. And so that is your exact -- that's
5 the only thing that you've done other than -- and
6 you said you reviewed the notes?

7 A. Well, okay, so I had literally heaps of
8 notes to look through, medical records, and over the
9 course of the time that I've been doing this, since
10 a year and a half ago, I've accumulated notes and
11 little indexes that I made for myself, ways for me
12 to navigate, sort of, this enormous medical chart.
13 So to review that, I'd go back through my own
14 written notes, references that I've made to the
15 actual chart, and just like you would study for an
16 exam, I'm just refreshing and reviewing things.

17 Q. Okay. So you have refreshed and reviewed
18 the medical records in this case; is that correct?

19 A. Sure.

20 Q. And you've looked over your notes; is that
21 correct?

22 A. Yes.

23 Q. What opinions of yours have changed from
24 the time that you testified previously to today?

25 A. I'm not sure that I'd be able to distill

1 that out. One interesting thing that happened was
2 I -- maybe a week ago I was reviewing my notes and
3 the medication change from lacosamide to Keppra that
4 we talked about a little while ago, I had not been
5 able to find in the medical record justification for
6 that. And I did find it, and the trouble that I had
7 been having was that the handwritten note from his
8 physician wasn't legible, and in this intervening
9 period I was able to better tease out what it said.
10 So I guess my opinion evolved regarding that
11 medication change because I was able to read
12 something that I hadn't previously been able to
13 read.

14 Q. All right. Any other changes since your
15 testimony?

16 A. Not that I can think of off the top of my
17 head, no.

18 Q. And you also wrote a report in this case;
19 correct?

20 A. That's true.

21 Q. And when did you --

22 A. You're talking about the report from
23 August?

24 Q. I don't know, because I was just provided
25 with it on Friday and it doesn't have a date on it.

1 A. Okay.

2 Q. Maybe I should show you a copy of it.

3 A. I'm familiar with it.

4 Q. Okay. You're familiar with it? So you
5 say you wrote it in August?

6 A. I believe so.

7 Q. In what year?

8 A. 2017.

9 Q. And it's not dated; correct?

10 A. Probably not. I think there is a date on
11 the file name in my computer, but I didn't put a
12 date at the top of the report.

13 Q. Okay. So there's no date of when you
14 wrote it. Okay. And you don't have Mr. Perez'
15 first name on it; correct?

16 A. I'm not sure.

17 Q. All right. Would you like to see a copy
18 of that report?

19 A. Sure.

20 MS. ARMIJO: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 A. I think this is two copies. Same thing.

24 BY MS. ARMIJO:

25 Q. I'm sorry?

1 A. That's okay. Well, okay. From what I can
2 see here, I did not use his first name.

3 Q. All right. And you also do not include
4 his date of birth; correct?

5 A. Seems like probably not.

6 Q. All right. And this report does not
7 have -- we already talked about doesn't have the
8 date; correct?

9 A. Right.

10 Q. And you do not have, like, your name
11 anywhere on it either.

12 A. Correct.

13 Q. Okay. And when you talk about things in
14 here, you don't ever say to a degree of medical
15 certainty; correct?

16 A. The phrase -- I believe I did not use that
17 phrase.

18 Q. Okay. Why don't you explain to the jury
19 what that phrase is.

20 A. I'm not sure what you mean.

21 Q. Okay.

22 MS. FOX-YOUNG: Your Honor, objection.

23 That's asking for a legal conclusion.

24 THE COURT: Overruled.

25

1 BY MS. ARMIJO:

2 Q. Have you heard that term before?

3 A. Yes, I have.

4 Q. Okay. Then what do you take that term to
5 mean?

6 A. I would assume -- and I'm partly guessing
7 here -- I would assume that in legal circles that is
8 used as a way to quantify your degree of certainty.

9 Q. Well, when Ms. Fox-Young asked you a
10 question, one of the questions that she asked you
11 was if your opinion was based to a degree of medical
12 certainty and you said yes.

13 A. When you say --

14 MS. FOX-YOUNG: Your Honor, that misstates
15 the question.

16 THE COURT: Overruled.

17 A. When you say "to a degree," do you mean
18 like to a large degree or --

19 BY MS. ARMIJO:

20 Q. I just mean -- have you ever testified
21 previously?

22 A. No.

23 Q. Okay.

24 A. I mean, I testified in the hearing that
25 you were present at.

1 Q. Okay.

2 A. And I've been deposed in another case.

3 This is my first time with a real jury in a
4 courtroom.

5 Q. Okay. So the question, then, in order to
6 give an opinion, an expert opinion -- and you're
7 here as an expert; correct?

8 A. Yes.

9 Q. Okay. And when an expert gives their
10 medical opinion, it's usually to the degree of
11 medical certainty. Okay?

12 A. Okay. Yes.

13 Q. So I guess I'm going to ask: In reference
14 to your report that you wrote, are the opinions that
15 you state to a degree of medical certainty?

16 A. Based on what you're explaining, yes.

17 Q. Okay. And is all your testimony that you
18 gave in your opinions with Ms. Fox-Young -- were
19 those all to a degree of medical certainty?

20 A. Yes.

21 Q. All right. Now, in regard to your report,
22 you also don't have any references; correct?

23 A. Correct.

24 Q. For instance, you talk about a great deal
25 of his medications and different treatments, but you

1 don't have references to where you found that
2 information.

3 A. That's right.

4 Q. Okay. And you also don't have any
5 references as far as if you used any sources;
6 correct?

7 A. In that report, that's correct.

8 Q. In that report.

9 A. That's right.

10 Q. Okay. So you have these opinions but it
11 doesn't say -- so it doesn't say -- for instance,
12 you talked about the med tool you use; correct?

13 A. Correct.

14 Q. Is that similar to what a pharmacist uses,
15 like, when I pick up medications and usually
16 sometimes I get warnings that say, you know,
17 "Warning. You shouldn't be taking this with that."
18 And the pharmacist will say, you know, "These two
19 medicines, you know, come up with an interaction."
20 Is that the same sort of tool?

21 A. I don't know what pharmacists use. I
22 mean, their level of expertise in terms of
23 medications is pretty expansive. Most of the things
24 that they would run across that would automatically
25 print out on a prescription that you would pick at

1 Walgreen's are going to be automatically generated
2 by databases that we -- you know, the computer
3 systems that we use.

4 Q. Okay. Now, you just mentioned
5 pharmacologicologists (sic). They're better suited
6 as far as giving opinions about medicines, correct,
7 and the interactions?

8 A. Yeah. It depends. I mean, we are the
9 prescribers, because we're the ones reading the
10 actual interactions in the patients. They are -- I
11 think of them more as, like, expert chemists. They
12 understand the interactions of medications with each
13 other in a way that reflects their expertise and
14 their training different than clinical care.

15 Q. Okay. So could you agree that
16 pharmacologicologists -- and there are
17 pharmacologicologists; experts?

18 A. I'm not familiar with the word
19 "pharmacologicologist." I work with a lot of
20 pharmacists.

21 Q. Okay. Are you aware of another expert?
22 Have you worked with -- let me ask this. Have you
23 worked with any other expert in this case regarding
24 Mr. Perez' medications?

25 A. No.

1 Q. All right. Now, you talked about the
2 medical records that you reviewed. And would it
3 surprise you that it's actually 14,913 pages?

4 A. I'm not surprised. It's -- but I didn't
5 count them. What did I say? 10,000 to 12,000?

6 Q. 10,000 to 12,000.

7 A. Yeah.

8 Q. Now, and that is the extent of what you
9 have based your opinions on here today; correct?

10 A. Correct.

11 Q. Okay. Now -- and there's, I guess, two
12 time lines and I'm going to talk about two different
13 time periods here, and you refer to them in your
14 reports. I'm going to go first to March of 2014.
15 And during that time period are you aware that Mr.
16 Perez actually gave an interview after the murder of
17 Javier Molina?

18 A. What kind of interview?

19 Q. An interview with law enforcement.

20 A. Oh, no. I wouldn't be aware of that.

21 Q. Okay. Would that be something that would
22 be important for you to consider?

23 A. I don't think so.

24 Q. Well, you talk about how during that time
25 period, I believe the term -- and I can go back and

1 look -- that you used was that he was fragile;
2 correct?

3 A. Correct.

4 Q. Okay. And you talked about all these
5 different possibilities with the medications he's
6 taking; correct?

7 A. Probably. In the report, did I talk about
8 his drug interactions?

9 Q. No. I'm just asking you now in general.
10 I'm not talking about the report.

11 A. Okay. Could you repeat the question?

12 Q. Okay. In March of 2014, I think you just
13 testified as to what you believed his physical
14 condition was; correct?

15 A. Yes, that's correct.

16 Q. And did you use the term "fragile"?

17 A. I believe I did.

18 Q. Okay. And then you talked about the
19 possible side effects of these drug interactions;
20 correct?

21 A. Correct.

22 Q. Okay. And some of which -- and what are
23 these possible side effects, again?

24 A. So the side effects that we just discussed
25 in particular are sedation, constipation and GI

1 upset; nausea, constipation, upset stomach, things
2 like that. Itching was another one that we talked
3 about.

4 Q. So I guess I'll go with sedation.

5 A. Okay.

6 Q. If there was a recording of him in March
7 of 2014 while he was under the effects of this
8 medicine, wouldn't it be something that you
9 should -- could consider in listening to see if he
10 was, in fact, sedated by these medicines?

11 A. I'm not sure that I would know.

12 Q. You're not sure that you would know?

13 A. Based on an audio recording of somebody's
14 voice, whether or not they're sedated?

15 Q. Correct.

16 A. I am not sure I would know.

17 Q. Okay. So what's your definition of
18 "sedated"? I guess I should ask that.

19 A. Sedated can be anything from tired to
20 incapacitated. So sedation waxes and wanes and can
21 be fatigue to inability to complete tasks, drive
22 safely, diminished reflex times goes along with
23 sedation, things like that.

24 Q. And your testimony is not that under this
25 possible sedation that a person is not able to

1 understand what they are doing; correct?

2 A. That would be one of the variables that
3 would be an extreme case of sedation, if you don't
4 know what you're doing.

5 Q. Okay. So in order to consider if Mr.
6 Perez was under any sedation to any degree -- for
7 instance, you said extreme sedation would be
8 unconsciousness; correct?

9 A. You could say that that would be an
10 extreme state of sedation.

11 Q. Okay. So we can rule out at least on the
12 date of his interview -- and I believe it was March
13 10th, 2014 -- that he was -- if he's able to give an
14 interview to law enforcement, that he was not under
15 extreme sedation at that point in time.

16 A. That he was not unconscious.

17 Q. That he was not unconscious.

18 A. Correct.

19 Q. Okay. And you're not saying that -- and
20 if he was able to understand questions and respond
21 to questions in a logical manner, what's your
22 opinion about that?

23 A. It's too subtle of a question for me to
24 form a medical opinion on. I don't have an opinion
25 on that.

1 Q. But you have an opinion on possible side
2 effects, but you're saying that actually listening
3 to somebody talk, that wouldn't come into your
4 opinion?

5 A. I am not able to diagnose someone just
6 based on an audio recording. So it's a different
7 thing to talk about their -- the effects that you
8 would counsel someone that they might experience,
9 and then ask them about the symptoms that they're
10 experiencing and how they feel, than to perceive
11 them in a moment in time and try to make a judgment
12 about what their status is. I just don't feel
13 comfortable offering a medical opinion on that.

14 Q. Okay. But you feel comfortable talking
15 about the effects of these medications on Mr. Perez;
16 correct?

17 A. I feel comfortable talking about the
18 effects of these medications, yes.

19 Q. All right. And so I'm going to assume,
20 then, that you also did not listen to any of the
21 hours and hours of recordings that he had in 2016;
22 correct?

23 A. I have never listened to a recording made
24 by Mr. Perez.

25 Q. All right. And in reference to those

1 recordings, specifically in 2016, in your report I
2 believe you phrased it, because you address it, that
3 he is accused of confessing. I believe that's the
4 term that you used; correct?

5 A. That might be true. I'm sorry, I don't
6 remember that sentence.

7 MS. FOX-YOUNG: Your Honor, objection,
8 hearsay.

9 THE COURT: If it's part of her report and
10 what she said.

11 MS. FOX-YOUNG: Your Honor, the report
12 wasn't prepared for trial.

13 THE COURT: Well, you elicited a lot of
14 stuff out of court statements, so if this is in her
15 report, she can be examined about it.

16 A. Okay.

17 BY MS. ARMIJO:

18 Q. Is that what you have in your report?

19 A. Are you reading it off the report? I
20 believe you.

21 Q. Well, if you want to look at your report,
22 I'll be more than happy to provide it to you.

23 A. Okay. I wonder if you could help me find
24 what you're looking for, because there are some
25 duplicate pages in here. I mean, I'm happy to dig

1 through it, but I'm not sure what I'm looking for.

2 Q. Sure. Page 6. The second new paragraph.

3 So third paragraph total.

4 A. Yes, I wrote that around the time that

5 Mr. Perez is accused of confessing to a role.

6 Q. In a murder?

7 A. In a murder. In the murder; right.

8 Q. Okay. And so I guess I'm wondering where
9 you got that information, since we know that you
10 only reviewed medical records.

11 A. So the attorneys I have been working with
12 let me know that the areas of interest that were
13 particularly relevant in this trial were the date of
14 the murder and then something that happened in
15 January or February of 2016, which was that he was
16 accused of confessing to the murder at that time.

17 Q. All right. And that was their
18 characterization of it?

19 A. I would say that was their
20 characterization of it.

21 Q. Now, just to be clear, I believe you
22 testified to this. You did not perform an
23 evaluation on Mr. Perez; correct?

24 A. Correct.

25 Q. But you've been here -- today is

1 Wednesday. You came in on Monday afternoon; is that
2 correct?

3 A. Yes.

4 Q. And so have you had an opportunity to
5 watch him get up in between court sessions and go
6 over and throw things away?

7 A. No, I didn't. I did watch him walk in one
8 day after a break.

9 Q. Okay. And so you haven't witnessed him
10 actually walk even without the assistance of a cane?

11 A. Correct, I have not.

12 Q. All right. You talked about -- again,
13 this is in your report, and you testified to it --
14 that he has a low IQ number. What is that number?

15 A. I don't know.

16 Q. What do you base that opinion on?

17 A. Medical records.

18 Q. Which medical records?

19 A. I believe that that was mentioned a couple
20 of different times on psychiatry initial evaluation
21 notes. So that would be the first note done by a
22 psychiatrist at one of the facilities right after
23 he's taken in there. As I mentioned before,
24 psychiatrists talk about these five different axes
25 of mental health, and so the background of your

1 psychosocial or innate congenital things that you
2 may have had since childhood are included as one of
3 those, and I believe that's where it was mentioned.

4 Q. So you cannot tell this jury exactly what
5 his IQ is; correct?

6 A. Correct.

7 Q. And you can't tell this jury whether or
8 not his low IQ comes from an actual test or whether
9 that is something self-reported?

10 A. Correct. I don't know.

11 Q. Okay. So you really can't say to a degree
12 of medical certainty that he has a low IQ; correct?

13 A. I would say that if someone that's a
14 colleague of mine by virtue of being a physician
15 puts it in their note, then I have a degree of
16 medical certainty to trust that, unless there's
17 other evidence of something else. I hope that's
18 clear. But medical records have a lot of problems,
19 and discerning how to filter out what's valid and
20 what's not is difficult. So I have some degree of
21 certainty. I'm not confident.

22 Q. So you're not confident; correct?

23 A. That he has a low IQ?

24 Q. Yes.

25 A. I'm not sure how to quantify it.

1 Q. Okay. So maybe we can take that off of
2 your expert opinion as far as the fact that he has
3 low IQ, because you just say you're not certain of
4 it. Would that be reasonable?

5 A. Sure.

6 Q. Okay. Now, you also talked about IED.
7 Explain to the jurors what that is.

8 A. That's intermittent explosive disorder.

9 Q. Okay. And you indicated that it's
10 something similar to -- I believe that it's a
11 diagnosis when other things can't be found; correct?

12 A. Diagnosis of exclusion.

13 Q. Much like SIDS?

14 A. No, I don't know anything about SIDS, not
15 being a pediatrician. Sorry.

16 Q. Then I won't use that. So are you
17 familiar with the DSM-IV? I guess the current one
18 is DSM-V that was effective as of May 2013; correct?

19 A. I have no idea when it was published, but
20 DSM-V is the current psychiatric diagnostic manual.

21 Q. And the DSM-IV is the one prior to it?

22 A. Correct.

23 Q. In looking it up, it appears that the
24 DSM-V came out in May of 2013.

25 A. Okay.

1 Q. So I'm going to be talking to you about
2 medical records that were before -- that include
3 before that date.

4 A. Okay.

5 Q. Now, going specifically to the
6 intermittent explosive disorders --

7 THE COURT: Ms. Armijo, I'm wondering if
8 we ought to take our break before you go into this
9 next segment. Would this be a good place to take
10 our lunch break?

11 MS. ARMIJO: Yes, Your Honor, it would be.
12 Thank you.

13 THE COURT: All right. We'll be in recess
14 for about an hour. All rise.

15 (The jury left the courtroom.)

16 MS. ARMIJO: Your Honor, can you please
17 admonish the witness not to have any discussions
18 during the lunch period, since she's in
19 cross-examination?

20 THE COURT: You're on the stand right now,
21 so you're in the middle of cross-examination. So
22 don't discuss your testimony with anyone.

23 THE WITNESS: All right.

24 THE COURT: We'll be in recess for about
25 an hour.

1 (The Court stood in recess).

2 THE COURT: All right. Let's go back on
3 the record. Ms. Fox-Young, do you want to complete
4 your request and let me -- let anybody else speak on
5 that?

6 MS. FOX-YOUNG: Your Honor, I'll note that
7 sometime in the last -- I think in the last few
8 minutes, a stack of documents that appears to be
9 maybe at least six inches high, almost six inches
10 high, has been provided to each defense team. I
11 haven't had a chance to look at it. I know some of
12 the other counsel have begun to look at it, and
13 there is a lot of material which we would certainly
14 classify as exculpatory, certainly material to Mario
15 Rodriguez's testimony, including admissions to the
16 rapes, which I think he denied in part.

17 And you know, Your Honor, we'll just have
18 to supplement the record at such time as we can look
19 at these hundreds of pages. So we have asked for
20 the Court to strike Mario Rodriguez' testimony, and
21 in writing I will inform the Court, in addition to,
22 of course, the Government's ongoing Brady and Jencks
23 obligations, and the Brady obligations are not
24 something the defense is required to alert the
25 Government to. This should have been turned over of

1 their own accord a long time ago, but I would alert
2 the Court to the prior rulings that are pertinent,
3 and we'd ask that that testimony be stricken.

4 I also am requesting any other documents
5 that the FBI has that pertain to these informants,
6 including writings of the informants. And I'd ask
7 the Court to find a Brady violation on that basis,
8 Judge.

9 THE COURT: All right. Thank you,
10 Ms. Fox-Young.

11 Did you have something you want to say on
12 this issue, Mr. Lowry?

13 MR. LOWRY: Not on this issue with regard
14 to the Rodriguez documents. But I did have
15 something with regard to the FBI field notes.

16 THE COURT: Let me do this. Let me get
17 the response so that I have it in my mind and I can
18 be thinking about it, and then I'll come back to
19 you, Mr. Lowry.

20 MS. FOX-YOUNG: Your Honor, just one other
21 item. We moved for a mistrial on the basis of Ms.
22 Armijo's questioning as to Mr. Perez' ability to
23 walk. He's shackled. She can't cross this witness
24 on that subject because Mr. Perez is shackled. And
25 there were numerous questions about: Did the

1 witness see him walking? Did the witness see him
2 moving around? The answer is: He cannot freely
3 walk. He is shackled. And on that basis, we had
4 move for a mistrial.

5 THE COURT: Well, I recall her testimony
6 as saying she didn't see it. She said she wasn't
7 watching him and didn't see him do it. So I don't
8 think there is any prejudice, because she denied she
9 saw any of it.

10 MS. FOX-YOUNG: Well, Your Honor, I still
11 think if he weren't shackled, I'd be able to cross
12 on that subject, and I can't. But I understand the
13 Court's ruling.

14 MR. MAYNARD: Your Honor, just briefly.

15 THE COURT: Are you going to speak on this
16 stack of materials?

17 MR. MAYNARD: Yes, just to join in that
18 request and move to strike Mr. Rodriguez' testimony.

19 THE COURT: Okay. All right. Mr. Beck.

20 MR. BECK: Your Honor, as I said, the FBI
21 just found out about these documents. As soon as
22 those documents made their way down here, I made
23 sure that they were copied overnight and into the
24 morning. We provided them to them as soon as they
25 got into the courthouse. I walked them up to the

1 attorneys so they had a hand on them.

2 I do not believe that any of these
3 documents are material. I don't believe many of
4 them, aside from the letter, are exculpatory. And I
5 don't believe the letter is exculpatory; the rest of
6 the documents less so. But do I not believe that
7 they are material, so there is no Brady or Giglio
8 violation.

9 We have been diligent in getting this
10 information to the defendants, in the defendants'
11 hands, as much as we can, and I'm not saying that it
12 wasn't just provided just now, but it's been a
13 diligent effort. I think that the requested relief
14 is extreme, because we are still in trial. We gave
15 it to them as quickly as possible, and they are
16 still able to use it. In fact, the defendants asked
17 that we make sure Mr. Rodriguez is available to be
18 recalled, and we've done that. They asked for Mr.
19 Sainato to be here so he could appear if they had to
20 call him for questioning. We did that.

21 So the United States has made both
22 witnesses available. It's produced the documents as
23 quickly as it was able to.

24 And the second request, that all writings
25 in the United States' possession be turned over for

1 the cooperators -- you may order that if you wish,
2 but all of the writings have been turned over. They
3 have all of those, aside from -- I don't know if
4 they're currently sitting in the cells with the
5 defendants -- with the cooperators. I don't know if
6 they contemporaneously have writings with them. But
7 any that are in the United States' possession have
8 been turned over.

9 THE COURT: So you don't oppose any order
10 ordering you to turn over those documents.

11 MR. BECK: The United States does not
12 oppose that.

13 THE COURT: All right. So I'll so order
14 that. Then let's do this. Let's just see what's in
15 the stack of material, and then we'll kind of have
16 to make a call after we're better informed on it.

17 MS. FOX-YOUNG: Your Honor, if we could
18 have the opportunity to question Agent Sainato
19 outside of the presence of the jury at some point,
20 if the Government has made him available.

21 THE COURT: Well, does it even need to be
22 here? Do I need to hear it? Can they just talk
23 to --

24 MS. FOX-YOUNG: I'd like to do it on the
25 record, Judge.

1 MR. BECK: They can talk to him. That's
2 fine. We'll make him available.

3 THE COURT: Why don't you just talk to
4 him. If there is a need to put something on the
5 record, we can. But why don't you start by just
6 talking to him.

7 All rise.

8 (The jury entered the courtroom.)

9 THE COURT: All right, Dr. Brislen. I'll
10 remind you that you're still under oath.

11 Ms. Armijo, if you wish to continue your
12 cross-examination of Dr. Brislen, you may do so at
13 this time.

14 MS. ARMIJO: Thank you.

15 BY MS. ARMIJO:

16 Q. I believe before lunch we were talking
17 about intermittent explosive disorders.

18 A. You were -- yes, either of -- the DSM-IV.

19 Q. And I believe that you had indicated that
20 you saw on some psychiatric evaluations how that had
21 been part of his diagnosis; correct?

22 A. Correct.

23 Q. And you also indicated that that can only
24 be considered -- only -- you didn't say this, but
25 I'm referring to the DSM-IV, and I want to see if

1 you agree with this -- only after all other
2 disorders that are associated with aggressive
3 impulses or behavior can be ruled out.

4 A. That terminology you just read is
5 consistent with what I think of as diagnosis of
6 exclusion, which we were talking about.

7 Q. All right. And that's to be different
8 from purposeful behavior, which includes the
9 presence of motivation and gain in an aggressive
10 act; correct?

11 A. I'm sorry. Could you clarify the
12 question?

13 Q. Well, aggressive behavior -- a person can
14 have aggressive behavior when there is no mental
15 disorder; correct?

16 A. Right. That's right.

17 Q. And so the purposeful behavior can be
18 distinguished, different, from the intermittent
19 explosive disorder.

20 A. Like behavior can happen without
21 impulsivity; that's correct.

22 Q. Right. All right. But you are aware from
23 going through his medical records and his
24 psychiatric records that he also has a diagnosis
25 consistently for antisocial personality disorder.

1 A. That's true.

2 Q. Okay. And what is your understanding of
3 antisocial personality disorder?

4 A. Personality disorders are complicated, and
5 they're a bit controversial, I'd like to mention as
6 well. So a personality disorder is a way of
7 categorizing --

8 Q. I'm sorry. I was talking about antisocial
9 personality disorder.

10 A. I don't feel I can categorize that without
11 talking about what a personality disorder is.

12 Q. All right. Go ahead.

13 A. So personality disorders are ways of
14 categorizing what we consider to be abnormal
15 behavior for which there is no known cause and no
16 cure. So it's a permanent label to put on someone,
17 which -- the reason why they're controversial is
18 because among the medical community, if there is no
19 cause and no treatment, is it really a disorder at
20 all, or how would you categorize that, is the
21 question.

22 So antisocial personality disorder is one
23 of the seven, I think, types of personality
24 disorders, and it has to do with not following usual
25 social norms about behavior in terms of

1 cause-and-effect consequences of your actions, usual
2 mores and customs. Does that make sense?

3 Q. Well, I'm asking you if that's what you
4 believe antisocial personality disorder is.

5 A. That's -- I would characterize it that
6 way.

7 Q. Okay. Would you also agree with the
8 DSM-IV that individuals with antisocial personality
9 disorder frequently lack empathy and tend to be
10 callous, cynical, and contemptuous for the feelings
11 and rights and sufferings of others?

12 A. That is how it is described.

13 Q. And in fact, they show little remorse for
14 the consequences of their acts?

15 A. Right. That's what I was talking about
16 with the consequences, cause and effect.

17 Q. Okay. And somebody with that can also be
18 referred to as a psychopath, a sociopath, or a
19 psychopathy; is that correct?

20 A. I can't comment on that. I don't know if
21 those two things are equivalent.

22 Q. Okay. Because deceit and manipulation are
23 central features of an antisocial personality
24 disorder.

25 A. Okay.

1 Q. Would you agree with that?

2 A. I believe you. If you're reading from the
3 DSM-IV, that seems reasonable.

4 Q. Okay. So that seems reasonable. And you
5 would agree that his psychiatric records include
6 more often than the IED the antisocial personality
7 disorder diagnosis.

8 A. That diagnosis is definitely in there. I
9 can't comment as to which one happens more
10 frequently, which one is written down more
11 frequently.

12 Q. But you didn't mention this one in your --
13 you talked a great deal about the medical records
14 and everything else as far as your conclusions and
15 significance. But you failed to mention the
16 antisocial personality disorder.

17 A. In the report?

18 Q. In your direct. No, in your direct.

19 A. Oh, okay.

20 Q. Is that true?

21 A. I don't think we talked about it in
22 direct.

23 Q. Okay. And do you disagree with me that
24 it's in there a great deal? Because I'm looking at
25 the medical records, and I'm more than happy to show

1 you some.

2 A. No, no, I know it's in there.

3 Q. Okay. And it's in there and it dates back
4 several years. Why don't you tell the jury when
5 that started.

6 A. I don't know. I would assume around the
7 same time that I saw IED, which might be as early as
8 '92. It might be in his very first medical records.

9 Q. Okay. You didn't take note of that as far
10 as in your timetable and everything else?

11 A. Right. So the reason for that, if you'd
12 like me to explain, is because, as I mentioned,
13 personality disorder is a label that's permanent for
14 which there is no treatment. So whether or not
15 that's relevant to his health care is -- personality
16 disorders don't always get recorded by internal
17 medicine people because they're sort of just -- this
18 sounds very callous and I'm sorry for the gallows
19 humor, but in internal medicine circles, we
20 sometimes refer to personality disorder people as
21 wacky and wild. They're just kind of different.
22 But it's not something that necessarily -- yeah. I
23 don't know what else to say. Personality disorders
24 are special among diagnoses.

25 Q. Okay. Well, but I think you're trying to

1 give this jury a complete picture of Mr. Perez;
2 correct? His health?

3 A. That's correct.

4 Q. And I believe that a lot of questions were
5 elicited about his mental health; correct?

6 A. That's true.

7 Q. Okay. But yet you purposely left off the
8 antisocial personality disorder; correct?

9 A. I didn't think to mention it.

10 Q. All right. Now --

11 MS. FOX-YOUNG: Your Honor, at least one
12 of the jurors is just motioning that they're having
13 trouble hearing the witness.

14 JUROR: Ms. Armijo.

15 MS. ARMIJO: Oh, I'm sorry. I'm the
16 offender. I'm so sorry. I will try not to walk
17 away from the mic.

18 BY MS. ARMIJO:

19 Q. And individuals with antipersonality (sic)
20 disorders tend to be irritable and aggressive and
21 may repeatedly get into physical fights or commit
22 acts of physical assault. Would you agree with
23 that?

24 A. That's my understanding.

25 Q. Okay. Now --

1 MS. FOX-YOUNG: Your Honor, we just ask
2 for a limiting instruction as this evidence can't be
3 offered for propensity purposes. And if you'd like
4 us to approach. I don't need to approach.

5 THE COURT: What did you offer your
6 testimony for?

7 MS. FOX-YOUNG: Well, I think this is
8 propensity evidence. I don't think --

9 THE COURT: What did you offer yours for?

10 MS. FOX-YOUNG: We didn't offer any
11 propensity evidence.

12 THE COURT: What is it offered for, then?

13 MS. FOX-YOUNG: Your Honor, if the Court
14 declines to give a limiting instruction --

15 THE COURT: Well, I guess I need to know
16 what you offered it for.

17 MS. FOX-YOUNG: Well, we didn't offer
18 evidence for -- we didn't offer any propensity
19 evidence, Judge.

20 THE COURT: That's not my question. What
21 did you offer it for?

22 MS. FOX-YOUNG: Your Honor, we offered it
23 to demonstrate that Mr. Perez didn't agree, as is
24 charged in this case, among other purposes.

25 THE COURT: Well, I'm not understanding

1 your objection. Overruled.

2 BY MS. ARMIJO:

3 Q. And just to be clear, there are several --
4 and I can show you this, just to refresh your
5 recollection, specifically going to March of 2013
6 and April of 2013, and January of 2013 and February
7 of 2013. And I don't have a problem. I can
8 certainly show you these.

9 A. What are we talking about?

10 Q. Well, I'm getting there. I'm just putting
11 it in reference to a time period.

12 A. Okay.

13 Q. So specifically from January 2013 through
14 April of 2013 that on his New Mexico Corrections
15 Department psychiatric encounter -- which you're
16 familiar with those records; correct?

17 A. I am.

18 Q. Because he was seen by a psychiatrist, or
19 at least they attempted to see him, at least every
20 month; correct?

21 A. Right.

22 Q. That there is no mention of IED but there
23 is mention of the antisocial personality disorder.

24 A. Okay.

25 Q. Do you want to see those?

1 A. I can concede that. That makes sense that
2 those would be there. If you would like me to
3 verify it, I will.

4 Q. Well, I believe you were saying that you
5 thought that most of the records have both the
6 antisocial personality disorder and the IED;
7 correct?

8 A. No, I just said I can't tell from my
9 memory which one occurs more frequently in the
10 record. I thought you were saying there is a tally
11 of some kind, and I think they're both in there,
12 they're both in there a lot, but I don't know which
13 one is there more. That's all I was trying to say.

14 Q. Well, would you agree with me that at
15 least during the time period -- because this, at
16 least in 2013 -- because that 2013 I believe is in
17 one of your charts -- I don't know where the charts
18 are. Let's see.

19 A. We talked about 2013 extensively. All
20 those months -- or all those dates that you
21 mentioned I think was when he was in the hospital
22 incarceration environment.

23 Q. All right. So you would not disagree with
24 me that during a lot of those medical records --

25 A. Right.

1 Q. -- they have him -- they evaluated him
2 quite extensively; correct?

3 A. That's true.

4 Q. And they have him down as having
5 antisocial personality disorder.

6 A. Sure.

7 Q. And not IED.

8 A. Okay.

9 Q. And then -- now --

10 A. So I don't -- sorry. Go ahead.

11 Q. All right. But you did not include that
12 in either your testimony or your report; correct?

13 A. I don't know if it's in the report. I can
14 check, if you like.

15 Q. Well, I believe there is a mention of it.
16 There actually may be.

17 A. There is. It's actually in the second
18 line.

19 Q. Okay. Where you talk about low IQ; is
20 that correct?

21 A. Low IQ, antisocial personality disorder.

22 Q. We already kind of ruled out that you're
23 not going to be considering him low IQ right now;
24 correct? To a degree of medical certainty. That's
25 what we discussed before lunch.

1 A. That's right.

2 Q. Okay. So -- but you don't disagree that
3 there have been findings by people who actually
4 examined Mr. Perez who are experts in this field,
5 not internal medicine, but actually in psychiatry or
6 mental health? I'll put it mental health.

7 A. Psychiatry is correct.

8 Q. Okay. Psychiatry. Even better. That
9 gave this diagnosis; correct?

10 A. So he was given that diagnosis before the
11 medical records that I saw, and he carried that
12 diagnosis throughout. I don't believe that's an
13 example of chart lore. I think he does have that
14 diagnosis.

15 Q. You think he does?

16 A. Yeah.

17 Q. Okay. Now, and you are being paid by Mr.
18 Perez' defense; correct?

19 A. I believe I'm contracted by the
20 Government. I'm paid by the infrastructure that
21 supports this whole process.

22 Q. They did hire you, though.

23 A. They did hire me, yes.

24 Q. Okay. Now, there is also in those medical
25 records refusals of Mr. Perez to participate in

1 therapy or go to appointments.

2 A. That's right. He declines appointments.

3 Q. And there's also inconsistencies with what
4 he tells providers about his childhood and any
5 issues of -- issues regarding his childhood. Would
6 you agree with that?

7 A. That is true. There are different
8 accounts, yeah.

9 Q. By him. Sometimes he mentions certain
10 events and sometimes he does not. Like he denies
11 certain events and other times he relates certain
12 events?

13 A. That's right. You have to be a little bit
14 careful about history-taking that happens. I think
15 in some cases it seems like he's told a different
16 story on different occasions, and at other times it
17 sounds like, reading those notes, questions may have
18 been asked a different way and therefore it comes
19 out differently.

20 Q. Well, but they're very specific as to
21 certain things; correct?

22 A. That's true.

23 Q. And you would agree that sometimes -- and
24 if you want, I can ask, but there are certain things
25 that are very sensitive in his past; correct?

1 A. That's correct.

2 Q. And there are certain times that he admits
3 to those actions; correct?

4 A. Yes.

5 Q. And there are other records in there where
6 he's asked about those incidents and he denies any
7 of it.

8 A. Yes, I think that's true.

9 Q. All right. Now, are you aware that there
10 is at least an allegation that he is an SNM Gang
11 member?

12 A. By virtue of being in this courtroom, yes,
13 I've gathered that.

14 Q. All right. And in some of the medical
15 records that were provided to you, there is also a
16 mention of that.

17 A. That may be true, but I can't recall.

18 Q. You can't recall?

19 A. That the medical records said that he was
20 a gang member? No, I just --

21 Q. No, not -- okay. Let me go back. I guess
22 I can get into this area now. You mentioned that he
23 had several traumatic events regarding -- let's
24 start with the traffic accidents.

25 A. Okay.

1 Q. Did you see those medical records?

2 A. No.

3 Q. Okay. So you have no idea of the severity
4 of injuries, correct? From medical records.

5 A. Disagree. I think that I saw sequela
6 medical records, follow-up medical records, that
7 documented those injuries sufficiently.

8 Q. Every one of those injuries? Let's
9 talk -- how many injures were there?

10 A. I don't know. I have to say that in my
11 notes I wrote occasionally TNTC, which is an
12 abbreviation for too numerous to count, when it
13 comes to physical injuries. So they were documented
14 in different ways. I would not be able to
15 reconstruct the car accidents individually and tell
16 you what happened in each one.

17 Q. But you're telling the jury that's
18 significant to you; correct?

19 A. What do you mean?

20 Q. Well, you were telling the jury about his
21 car accidents and the trauma that was inflicted on
22 him; correct?

23 A. That's right.

24 Q. Okay. But you can't give this jury an
25 idea of any exact details as to when these injuries

1 occurred, if you saw -- I'll do one at time. You
2 can't tell this jury when any of these accidents
3 occurred?

4 A. I know he had car accidents in 2002 and
5 again in 2005.

6 Q. Okay. That's two incidents; correct?

7 A. Yes.

8 Q. Are there any others?

9 A. There were references to others that I
10 couldn't confirm that they were distinct from those,
11 so I'm not sure.

12 Q. Okay. So then we'll narrow it down that
13 your testimony is then -- since you don't know about
14 any of the others, so you can't really talk about --
15 2002 and 2005; correct?

16 A. So what I feel like I'm testifying on is
17 accumulated trauma and physical health in a certain
18 period of time that I have records for, and those
19 are attributed to these car accidents or attributed
20 to injuries that happened outside of the medical
21 records. I'm a little bit puzzled about what you're
22 asking.

23 Q. Well, I'm trying to get to the point that
24 you rely on these medical records a great deal;
25 correct?

1 A. Yes.

2 Q. That's the only thing that you base your
3 opinion on.

4 A. Correct.

5 Q. Okay. But wouldn't it be important -- if
6 there is information that's incomplete in here, then
7 your information is incomplete; correct?

8 A. I've never encountered a medical record
9 that was actually complete. So I suppose, yes, it's
10 always incomplete, yes.

11 Q. Okay. Well, you're here to give the whole
12 health picture for the relevant time periods;
13 correct?

14 A. That's right.

15 Q. We heard a lot about these relevant time
16 periods. And so when you talked about trauma in a
17 generalized way -- and I'm just trying to get
18 specific information from you.

19 A. Okay.

20 Q. Okay. So you mentioned 2002 and 2005;
21 correct?

22 A. That's right.

23 Q. Okay. And those are the only ones that
24 you can tell this jury that you are aware of it
25 being documented; correct?

1 A. That's right.

2 Q. And by "documented," you just mean
3 referred to. You did not see the actual -- any --
4 by documented, you saw, like, self-admissions to it;
5 correct?

6 A. Or a physician's reference to it, yeah.

7 Q. Okay. Did you see any CAT scans?

8 A. No.

9 Q. Did you know whether or not in these two
10 car accidents -- whether or not he was unconscious?

11 A. There was reference to him losing
12 consciousness, yes.

13 Q. Okay. Any reference for how long that
14 consciousness was? I believe you talked --

15 A. No.

16 Q. No? Okay. Any reference on whether or
17 not was any permanent damage from this?

18 A. Yes.

19 Q. Okay. For which incident?

20 A. That's a good question. I can't recall
21 whether there was a distinct reference to the car
22 accident of 2002 specifically worsening his seizure
23 disorder, or whether that was sort of a summary
24 statement made after the car accident in 2005. I
25 don't remember.

1 Q. So you can't tell the jury which incident
2 it was, but your recollection is that somewhere
3 there is a reference that it may have impacted his
4 seizure disorder?

5 A. There are several references to the fact
6 that these car accidents impacted his seizure
7 disorder.

8 Q. Okay. But again, you didn't see any of
9 the records or know -- or anything about
10 hospitalization, CAT scans or anything else;
11 correct?

12 A. Right.

13 Q. Because that would have been even more
14 valuable to you, to go straight to the horse's mouth
15 to make your determination; correct? So to speak?

16 A. Sure, yes. The more information, the
17 better.

18 Q. All right. So -- okay. That's the car
19 accidents. And then you talked about stabbings, I
20 believe.

21 A. That's right.

22 Q. Okay. And where was the stabbing?

23 A. I have multiple. There are records of
24 multiple stabbing injuries to the chest and abdomen,
25 and those are documented extensively, actually. So

1 every time he has a comprehensive physical exam,
2 there's documentation of the scars. Sometimes
3 that's done generally and it just says several
4 abdominal scars. Other times there have been
5 drawings where those are marked where those were.

6 Q. But those are references to evidence of a
7 stabbing. I'm talking specifically about when the
8 stabbings occurred and how.

9 A. That's right. I don't have specific
10 records of him being stabbed during the time that I
11 evaluated the records.

12 Q. Okay. And is there any self-reporting to
13 this that you recall?

14 A. Yes. Absolutely, yes.

15 Q. Okay. And what is the self-recording by
16 Mr. Perez as to the stabbing?

17 A. Describing the same thing, multiple
18 stabbing injuries in abdomen and chest.

19 Q. Okay. What about when these stabbings
20 occurred and the circumstances?

21 A. I don't recall. I'm sorry. I mean --
22 well, I don't recall.

23 Q. So you can't tell this jury anything about
24 when these stabbing occurred?

25 A. I would have to go pretty detailed into my

1 notes to pick out the specifics of those.

2 Q. Well, I'm going to show you and refresh
3 your recollection. And I'm referring to Perez 3183,
4 which is a New Mexico Corrections Department
5 clinical assessment.

6 MS. ARMIJO: May I approach, Your Honor?

7 THE COURT: You may.

8 A. Okay.

9 BY MS. ARMIJO:

10 Q. All right. Do you see that?

11 A. I did read that.

12 Q. Okay. And is that a self-report of it?

13 A. Yes.

14 Q. Okay. What did he indicate about the
15 stabbing?

16 A. He said that he was stabbed while he was
17 an inmate, due to him being a member of the gang.

18 Q. All right. And of the gang, it's of the
19 SNM specifically; correct?

20 A. That is what that says, yes.

21 Q. And just so that we're clear -- and I can
22 show you -- this assessment was dated June 25, 2014?

23 A. Okay.

24 Q. Well, I'll show you. I believe it's on
25 that page.

1 A. Yes, that's the date, 6/25.

2 MS. FOX-YOUNG: Your Honor, I object to
3 relevance, since Mr. Perez doesn't dispute his
4 membership.

5 THE COURT: Well, overruled. The
6 Government can prove its point how it wants.
7 Overruled.

8 BY MS. ARMIJO:

9 Q. Now, did you consider his personal history
10 in addition to his medical history?

11 A. What do you mean by personal history?

12 Q. Well, you are aware that he has 10
13 children by nine different women?

14 A. Yes.

15 Q. And the age of those children?

16 A. Widely distributed. Something like five
17 years old to 25 years old or something.

18 MS. FOX-YOUNG: Your Honor, may we
19 approach?

20 THE COURT: You may.

21 (The following proceedings were held at
22 the bench.)

23 MS. FOX-YOUNG: Your Honor, I understand
24 that relevance is construed broadly, but I struggle
25 to see the relevance of Mr. Perez' children, how

1 many, and what their ages are, to his medical
2 history. I don't know where the prosecutor intends
3 to go, but if Ms. Armijo is just trying to elicit
4 facts for the jury outside of his medical record,
5 that is inappropriate to put on character evidence
6 about Mr. Perez.

7 MS. ARMIJO: I think it's important
8 because she has labeled him as fragile. We went
9 through a great deal about his medical history
10 starting from 1992, and his seizures and everything
11 else. So I think the fact that -- about all this,
12 his issues and health, he can't walk, and the term
13 "fragile" is quite important. I think he has
14 several children.

15 THE COURT: He had several children since
16 1992?

17 MS. ARMIJO: I think since 2014 he had a
18 five-year-old.

19 MS. FOX-YOUNG: Your Honor, we didn't
20 elicit anything about his sexual ability or ability
21 to have children.

22 THE COURT: I'm not sure that you get to
23 slice things this thinly. Why don't you just ask
24 leading questions on this to make your point on the
25 50-year-old, and let's get in and out on it.

1 MS. ARMIJO: I'm done with this area now.

2 THE COURT: Okay. Let me talk to you a
3 little bit about the 404(b) objection. I mean, I'm
4 confused and I think you're struggling to articulate
5 why you're offering her as a witness. It seems
6 because you're offering to say that because he has
7 all these conditions he could not act in conformity
8 with the charges. You're putting on 404(b) and then
9 the Government is eliciting testimony about, you
10 know, he's got these medical conditions and can act
11 in conformity with them. I mean, isn't everybody
12 putting on this evidence to establish that, you
13 know, either he had the ability to act in conformity
14 or not act in conformity? I mean, isn't that what
15 this basically is? How do you distinguish what you
16 did from what Ms. Armijo is doing?

17 MS. FOX-YOUNG: Well, Your Honor, I don't
18 struggle to do it. I just didn't want to do it in
19 front of the jury. But a lot of this evidence to
20 get Mr. Perez' reasonable fear and his state of mind
21 at the time that rumors were swirling --

22 THE COURT: Aren't you trying to solicit
23 testimony and evidence saying at different points in
24 time he had conditions that would prevent him from
25 doing it and, therefore, in this case he's acting

1 the way he did on prior occasions? Isn't that
2 404(b)?

3 MS. FOX-YOUNG: No, Your Honor, because
4 we're getting into specific aspects of his medical
5 state in March 2014 and February 2016 that informed
6 his state of mind. He couldn't defend himself. He
7 was faced with, as Ms. Armijo just solicited,
8 attacks by gang members, he was a fragile guy, he
9 was weak, he was not in a position to defend
10 himself.

11 THE COURT: But you objected to Ms. Armijo
12 asking about a medical condition in a generic sense.
13 She was simply asking for, I guess, it was impulsive
14 explosive disorder, and she was asking what are the
15 symptoms and characteristics of that. So it wasn't
16 even directly on point as to Mr. Perez. But --

17 MS. FOX-YOUNG: I believe she asked if he
18 had that disorder and therefore those would be
19 applied to him.

20 THE COURT: Well, hold on a second. Let's
21 get the question, because it didn't seem to me it
22 was appropriate to the question. But I'm trying to
23 understand overall what you were trying to do with
24 the witness, and now what you're objecting to, and
25 if there is any difference between the two.

1 MS. FOX-YOUNG: I think you're right,
2 Judge, that I objected immediately after a question
3 about the disorder itself. But this was after a
4 line of questioning as to whether Mr. Perez had this
5 condition, implying to the jury --

6 THE COURT: Here's the question that you
7 objected to and it says, "Individuals with
8 antipersonality disorders tend to be irritable and
9 aggressive, repeatedly get into physical fights or
10 commit acts of physical assault. Would you agree
11 with" -- I'm not sure what it's saying, but that's
12 my understanding, the generic question about this
13 particular disorder, which I thought was a disorder
14 that you brought up.

15 MS. FOX-YOUNG: And Your Honor, actually
16 it wasn't. Ms. Armijo brought this disorder up.
17 But I don't object to the question or the response.
18 We just ask for a limiting instruction that it can't
19 be used as propensity evidence. I think the Court
20 is right that it's relevant and that it's within the
21 scope.

22 THE COURT: If it's not being brought for
23 propensity, what is it being brought for? I guess
24 what is your testimony before, because it seems to
25 me you're asking the jury to look at a lot of

1 medical conditions and say because of these
2 particular points, this must have been his situation
3 on March 9. And it sounds to me like that's 404(b)
4 propensity, that because these are the ways he was
5 afflicted and hurting at different points in time,
6 that must have been the case on March 9, or whatever
7 other date you think is relevant to the discussion.
8 So I'm trying to distinguish what you're doing from
9 what the Government is doing.

10 MS. FOX-YOUNG: I think the evidence that
11 we put on is intended to assist the jury in making
12 the determination whether Mr. Perez agreed.

13 THE COURT: Would you have any objection
14 if I gave the jury a limiting instruction that was
15 across the board that says something to the effect
16 of all the testimony that Dr. Brislen is using
17 cannot be used for propensity purposes? And by that
18 I mean that because certain things occurred at
19 certain times in the past to Mr. Perez, necessarily
20 they are applicable on the days that are important
21 for the facts of this case. It seems to me I'm
22 struggling to see what the difference is between
23 your testimony and Ms. Armijo. If we just say they
24 can't use it and then at some point y'all can
25 articulate what you are using it for --

1 MR. VILLA: Judge, 404(b) says we're using
2 this evidence not for propensity but for some other
3 purpose. And when the propensity -- bringing it in
4 as Ms. Armijo is, we ask for a limiting instruction,
5 we are entitled to one. We didn't offer it to show
6 propensity.

7 THE COURT: Maybe it's my own inability to
8 understand the difference between the two here. I
9 mean, you all seem to be reluctant to offer the
10 reason that you're offering this testimony in front
11 of the jury. And if I ask the Government what
12 they're offering it for, they'll probably say just
13 elaborate and discredit and explore what y'all
14 offer.

15 MR. VILLA: The evidence isn't offered to
16 show that in the past he didn't agree to the crime
17 or he did agree to the crime. The evidence is
18 offered to show what his medical state was at the
19 time that Mario Rodriguez came in and took that
20 piece from the walker, and it's offered to show what
21 his medical state was at the time that he made
22 statements to Billy Cordova.

23 THE COURT: What, then, is that being
24 offered for?

25 MR. VILLA: For the jury to determine

1 whether he was in fear, whether he could defend
2 himself. It supports the duress defense whether he
3 would agree or not to allow that, whether he could
4 have stopped Mr. Rodriguez if he wanted to. That's
5 not propensity. It's relevant to show whether he
6 entered into an agreement to commit the crime.

7 THE COURT: And what are you eliciting
8 this for, Ms. Armijo? What non-404(b) purpose are
9 you eliciting it for?

10 MR. BECK: Your Honor, I think showing
11 that Mr. Perez was infirm, he had some kind of
12 mental condition that was preventing him from
13 agreeing or preventing him from acting in a certain
14 way, on the day in particular, March 7, or during
15 his February confessions, the only way they can come
16 to that conclusion is by showing in the time leading
17 up to that -- and I think we've had testimony from
18 1992 -- specifically from 2012 on her chart that he
19 was at risk health wise; that he was infirm
20 physically, that his seizures mentally may have
21 prevented him from voluntarily providing statements
22 throughout that time. And so the jury can use that
23 as propensity for him to have the mental effects
24 during February. And so the only basis on which
25 this would be relevant is if the jury can infer from

1 his past health conditions that on the days relevant
2 to this case, March 7 and February 2016, they can
3 infer because he was sick before, he was sick on
4 those days. So the only way her testimony has been
5 relevant at all was propensity. They can infer from
6 the fact that he was sick before that he was sick on
7 those days. So Mr. Villa just said about the
8 reasons they're offering this is propensity. So
9 under 404(b), that's the reason they're bringing it
10 in. We're allowed to rebut that evidence. That's
11 the purpose of cross-examination and the purpose of
12 rebuttal. And so the Court is probably correct that
13 if there is a limiting instruction, that limiting
14 instruction would be that both parties are using Ms.
15 Brislen's testimony and Mr. Perez' health and mental
16 health conditions for a nonpropensity purpose, one
17 of which I can't think of. But if there is some
18 purpose, then it would apply to both sides equally,
19 and then I don't see the relevance or admissibility
20 of her testimony at all.

21 THE COURT: Well --

22 MS. FOX-YOUNG: Your Honor, could I add
23 three additional purposes for which we offer this
24 testimony which are not 404(b)?

25 THE COURT: Give me the year again.

1 MS FOX: It's 2014; March 7, 2014.

2 MR. BECK: Right.

3 THE COURT: Then the transcripts had what
4 date?

5 MR. BECK: February of 2016.

6 THE COURT: Well, I guess I'm inclined to
7 just make sure that -- I mean, it doesn't seem that
8 there is any objection to the testimony coming in.
9 But I do think that I'm going to tell the jury that
10 they can't use this evidence of Mr. Perez' medical
11 condition to prove that on those two dates he was
12 acting in accordance with some of the diagnoses that
13 are being elicited by Ms. Armijo's testimony. They
14 can use it for other purposes and issues in the
15 case, but not for the fact that he was acting in
16 accordance with those diagnoses that appear in the
17 records on those particular dates. Does that then
18 address the defendant's concern?

19 MS. FOX-YOUNG: Yes, Your Honor.

20 MR. BECK: The concern that I have with
21 that, Your Honor, is that if this isn't being
22 offered to show that he acted in conformance with
23 these diagnoses, then what is the purpose of this
24 testimony at all? What is the relevance?

25 THE COURT: All right. Let me go ahead

1 and let Ms. Fox-Young state those three reasons. I
2 think it seems to me that I'm having a hard time
3 seeing how Mr. Perez will be offering this as
4 propensity evidence. But go ahead and state what
5 you think the reasons are for offering this
6 testimony.

7 MS. FOX-YOUNG: Well, Your Honor, you've
8 heard several, but I just wanted to tell the Court
9 they fall under motive, the voluntariness of the
10 statements, and also his state of mind. And I
11 described some of the ways in which it informs his
12 state of mind. And I think perhaps the Court sees
13 that is applicable both on March 2014 and in
14 February 2016. So these are non-404(b) purposes.

15 MR. VILLA: And Your Honor, specific to
16 one issue I brought up with Mr. Cordova, when Mr.
17 Perez tells Mr. Cordova on the recordings he
18 wouldn't have allowed them to take the piece from
19 his walker if it wasn't a legitimate move, and I
20 asked Mr. Cordova if Mr. Perez was physically able
21 to do anything about it to stop it, and he said yes,
22 he was. And this testimony directly contradicts
23 that. So it goes to Mr. Perez' physical ability to
24 stop somebody like Mario Rodriguez from doing what
25 he was doing, taking that piece from his walker.

1 THE COURT: All right. On these
2 diagnoses, it appears I'm going to give the limiting
3 instruction and take it a question at a time.

4 MR. BECK: I'll just note for the record,
5 Your Honor, that the United States is offering this
6 testimony for the exact same reason, because -- to
7 the extent that the diagnoses of having seizures or
8 being infirm physically go to his state of mind.

9 THE COURT: Then you shouldn't have any
10 problem with the limiting instruction I'm about to
11 give.

12 MR. BECK: Okay.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. In Ms. Armijo's
16 testimony she's elicited some testimony from Dr.
17 Brislen regarding some diagnoses that are in the
18 medical records. Evidence of Mr. Perez' diagnoses
19 that are in the records is not admissible and it
20 should not be used by you to prove or to influence
21 you in any way that on March 7, 2014, or in February
22 of 2016, when the recordings were made, that Mr.
23 Perez was acting in accordance with those characters
24 or traits or diagnoses that appear in the medical
25 records that Dr. Brislen is testifying about. She's

1 given some testimony about what some of those
2 disorders are, and you can't use those to decide
3 that Mr. Perez was acting in accordance with those
4 diagnoses on those particular dates, which are the
5 ones that are primarily at issue here.

6 Ms. Armijo.

7 BY MS. ARMIJO:

8 Q. Dr. Brislen, now, in reference to the
9 antisocial personality disorder, you kind of
10 mentioned that you think it's kind of just carried
11 through at times; is that correct? My term, not
12 yours.

13 A. No, you mean -- so what I think happens
14 is, when he sits down with one of his mental health
15 providers and they write ASPD on it, or ASD for
16 antisocial personality disorder, they're documenting
17 that in sort of a general assessment historical
18 sense. They're not evaluating him at every visit to
19 see if he meets the criteria for that disorder.
20 It's not a diagnosis that's being made at that time.
21 It's the same way we would start a visit by saying,
22 "This is 49-year-old male with diabetes and
23 hypertension." They're saying, "This is a gentleman
24 with antisocial personality disorder, anxiety, and
25 depression." And then they get on with the meat of

1 what they're working on that day. Does that answer
2 your question?

3 Q. Yes. But actually, there is a clinical
4 assessment that goes into detail about that and goes
5 into why it is that the antisocial personality
6 disorder was given to him, and they actually go into
7 statements that he made. Do you recall that
8 assessment?

9 A. I would love to refresh my memory.

10 Q. All right. Let me do that. And I'm
11 referring to --

12 MS. FOX-YOUNG: If Ms. Armijo would just
13 let me take a look at the document.

14 MS. ARMIJO: I would. I'm trying to get a
15 clean copy as opposed to my copy.

16 BY MS. ARMIJO:

17 Q. And specifically for the record I'm
18 referring to Perez 3182.

19 MS. FOX-YOUNG: Your Honor, may we
20 approach?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MS. FOX-YOUNG: So my concern, Judge, is
25 that Ms. Armijo wants to refresh Dr. Brislen with a

1 document that goes into detail about Mr. Perez
2 presenting with threatening statements about his
3 potential to harm people who cross him. And this is
4 dated -- I believe this is 2/16/09. Well, there is
5 no date on the document itself.

6 MS. ARMIJO: The second page.

7 MS. FOX-YOUNG: This is five years prior
8 to the incidents in question, and I think on 403
9 grounds, if she intends to start getting into
10 statements, some statements that Mr. Perez made five
11 years before the Molina murder when his psychiatric
12 state has been evolving, this is very prejudicial.
13 If she just wants to refresh and that the antisocial
14 personality disorder was a diagnosis that stuck at
15 this time, but if she wants to elicit the statement
16 that Mr. Perez may commit crimes in the future, five
17 years before Javier Molina was killed, this is
18 totally prejudicial, and on 403 grounds I'd ask the
19 Court to disallow it.

20 THE COURT: Let's do this: I think there
21 are certainly things she can ask that aren't going
22 to be 403. Let's see how far she goes. You can
23 make an objection. I guess I'm inclined to think,
24 given how far back Dr. Brislen went on his
25 diagnosis, I'm probably not going to sustain. But

1 if you want to renew when a particular question is
2 raised, you can do it. But I think there's going to
3 be certain questions raised that are not
4 objectionable.

5 MS. FOX-YOUNG: Is the Court willing to
6 take a look at the document and see if those
7 particular statements could be excluded?

8 THE COURT: Given that you went back to
9 1992, it's kind of difficult for me now to start
10 cutting things off.

11 MS. FOX-YOUNG: Your Honor, the Government
12 didn't have a 403 objection. We went back for
13 context to show what she had reviewed.

14 THE COURT: I remember they really did
15 object to the entire -- Dr. Brislen being put on the
16 stand. They filed a formal motion which I denied.

17 MR. VILLA: That was based on the
18 incorrect understanding of the law that this Court
19 excluded -- just denied the motion to suppress, that
20 the voluntariness of the statement wasn't still
21 relevant for the jury. And that was argument one.
22 The other argument in the motion was with respect to
23 the duress defense, and whether he could have taken
24 some action in the two hours that he had to stop the
25 murder. And the statements from 2009 have no effect

1 upon this.

2 THE COURT: Her testimony has been that
3 she thinks her assessment of him is the same today
4 as it was several years back. So she's reaching
5 back in time and forming an opinion as to his mental
6 or physical condition and pulling the cord. It's
7 difficult.

8 MS. FOX-YOUNG: She reached back from 2016
9 to 2013, but we didn't elicit specific findings with
10 regard to his mental health status at this time, and
11 I agree that there is some relevance to the fact
12 that he had the disorder at this time. But the
13 statements themselves are so highly prejudicial and
14 they're offered for no other reason.

15 THE COURT: Well, there are statements of
16 the defendant here. I'm not inclined to exclude
17 them, but let's take the questions one at a time.
18 Because I think there is some evidence that the
19 Government can get that would be unobjectionable and
20 I'll just have to take them one at time.

21 MR. BECK: Your Honor, the motion to
22 exclude Dr. Brislen also was based on the fact that
23 the purpose of offering her was to engender sympathy
24 and prejudice to the jury; that she couldn't
25 specifically opine on any relevant factor for

1 duress, and so this -- the fact that she left out
2 this diagnosis and these acts is important to rebut
3 that purpose for which she's offered. And I don't
4 think -- I don't think that the danger of unfair
5 prejudice outweighs the probative value of this when
6 they did not mention once in any report or her notes
7 diagnosis of this disorder which appears almost all
8 the way throughout the medical records, and she
9 didn't mention once what this is.

10 And I also will note the danger of unfair
11 prejudice significantly lessened once the judge has
12 already instructed the jury that they cannot use
13 this evidence for propensity purposes but only for
14 the state of mind. So they're already coming in for
15 a limited purpose.

16 MS. FOX-YOUNG: Your Honor, she did say he
17 had a mood disorder, and we're talking about the
18 statements themselves which are highly prejudicial,
19 five years before this murder. I don't object to
20 questioning about the existence of the disorder.
21 It's just Mr. Perez' statements which are so
22 inflammatory, and have no relevance to activity five
23 years later and highly prejudicial.

24 MS. ARMIJO: But she specifically stated
25 just now that she thinks that they don't do a

1 comprehensive evaluation for antisocial personality
2 disorder; that it's just something in the records
3 that just kind of gets carried through. And this is
4 a specific incident of where they're doing an
5 assessment of him and he gives statements that help
6 this provider make the determination that he has
7 antisocial personality disorder as opposed to what
8 she just testified about. So it's also being used
9 to impeach her and her credibility and show her
10 bias, that she's totally dismissing this actual
11 evaluation from her complex review of the medical
12 records.

13 THE COURT: Let me give it some thought.
14 But let's take it a question at a time.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right, Ms. Armijo.

18 BY MS. ARMIJO:

19 Q. All right, Doctor. I'm sorry. We are --
20 I'm referring to a clinical assessment done by the
21 New Mexico Corrections Department, which is dated
22 February 16 of 2009, and so -- and I will give you a
23 copy of the report.

24 MS. ARMIJO: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 BY MS. ARMIJO:

3 Q. Are you familiar with those types of
4 reports that are throughout Mr. Perez' medical
5 records that you reviewed?

6 A. Yes.

7 Q. And you see on the bottom that it says
8 Perez 732 on the first page, and Perez 733; correct?

9 A. I do see that.

10 Q. And I'm specifically looking for the
11 paragraph on the first page, "Current or most recent
12 mental health/psychiatric/medical diagnosis and
13 treatment." Do you see that?

14 A. Yes. Would you give me just a minute to
15 look at this?

16 Q. Sure.

17 A. All right. Thank you.

18 Q. And you've reviewed that document?

19 A. I haven't read it word for word because
20 it's quite long, but I'm ready to answer some
21 questions if you like.

22 Q. Okay. Well, you would agree -- did you
23 read the one paragraph I was referring to?

24 A. "Current or most recent mental health/
25 psychiatric/medical diagnosis"?

1 Q. Yes.

2 A. No.

3 Q. Can you read that one paragraph?

4 A. You'd like me to read it out loud?

5 Q. No. Did you read it to yourself?

6 A. I will now. All right.

7 Q. All right. You've read that paragraph?

8 Okay. And would you agree with me that in
9 discussing his -- and the title of this is "Current
10 or most recent mental health/psychiatric/medical
11 diagnosis and treatment"?

12 A. Right.

13 Q. And you would agree with me that in
14 addition to indicating that he has consistently been
15 diagnosed with antisocial personality disorder due
16 to his history, that they also interviewed him, as
17 well; correct?

18 A. I'm sorry, I didn't understand the
19 question.

20 Q. Okay. In addition to mentioning that he
21 has a long-standing history of being diagnosed with
22 it; correct?

23 A. Right. Right.

24 Q. And they even talk about specifically that
25 he's diagnosed with it due to his long-standing

1 criminal and violent offense history; correct?

2 A. I'm just not connecting the question. So
3 yes, he is consistently diagnosed with that; and
4 yes, his violent history is also described in this
5 paragraph.

6 Q. Okay. And so then the next thing, you had
7 indicated that you weren't sure whether or not these
8 providers that are evaluating him -- whether or not
9 they actually kind of do an evaluation themselves
10 and really consider the issue, so to speak.

11 A. That's right. I still go with that. I
12 mean, coming to the conclusion of giving that
13 diagnosis versus stating it as part of his medical
14 history are two different things.

15 Q. Well, the statement that I just made was
16 part of his medical history; correct?

17 A. The statement that you made is: He has
18 consistently been diagnosed with antisocial
19 personality disorder due to blah, blah, blah. Yes.

20 Q. Due to his longstanding criminal and
21 violent offense history.

22 A. Yes.

23 Q. Okay. But then after that, there is also
24 a determination made from their interview of Mr.
25 Perez; correct? It would be consistent with that.

1 A. That's right. So there is a statement at
2 the end of the document that says he fully meets
3 Axis 2 criteria with prominent antisocial
4 personality disorder.

5 Q. Well, no. But right after that it says,
6 "During interview, Mr. Perez presented with
7 threatening statements about" --

8 THE COURT: Let's ask our questions rather
9 than reading from the document.

10 MS. ARMIJO: Okay.

11 BY MS. ARMIJO:

12 Q. Is there any indication about a statement
13 that Mr. Perez made?

14 MS. FOX-YOUNG: Your Honor. I'd object.

15 THE COURT: Let her ask this question.
16 It's a yes/no.

17 A. Sure. Yes.

18 BY MS. ARMIJO:

19 Q. And is the statement that he made directly
20 related to the reference to antisocial personality
21 disorder?

22 A. He made statements consistent with that
23 disorder during this visit.

24 Q. Okay. All right. And what statement did
25 he make?

1 THE COURT: Well, I'm going to sustain. I
2 think you've gotten her opinion and why she's
3 relying on it. And I don't think we need to get
4 into the specific statements, so I'll sustain the
5 objection.

6 Q. Okay. Would you agree with me, Doctor,
7 that there is a statement that Mr. Perez makes in
8 February of 2009 that indicates that this antisocial
9 personality disorder was just not something that was
10 carried through; that this person actually made the
11 diagnosis, as well, based on statements that Mr.
12 Perez made?

13 A. I think they made that diagnosis based on
14 the comprehensive -- everything in this note
15 contributed to that diagnosis, which was made and
16 confirmed at this time.

17 Q. Okay. Made and confirmed. And there are
18 statements that he made that are consistent with
19 that diagnosis?

20 A. Sure.

21 Q. Yes?

22 A. Yes. I mean, yes, absolutely. They could
23 be consistent with a number of things, and in this
24 context they were consistent with that diagnosis,
25 and that's part of why that diagnosis was made, is

1 how I read this note.

2 Q. Okay. So -- all right. And that's in
3 2009, and then -- and going back to the -- I'm
4 sorry -- to the June 25, 2014, assessment that
5 you -- that I showed you, do you recall that was the
6 one that I showed you in reference to him being
7 stabbed?

8 A. Yes, right. That's the one that said he
9 had been in the car accident and hit the railroad
10 tracks, et cetera, and was in a coma for nine days.
11 You were asking me to clarify.

12 Q. Yes. And that information is self-report
13 by him?

14 A. Yes.

15 Q. Okay. This doesn't refer to any medical
16 records for that; correct?

17 A. My impression of what I read that you
18 showed me is that that was all just patient history
19 that was given at that time.

20 Q. Okay. As far as -- in fact, it says he
21 reported; correct?

22 A. Right.

23 Q. And then the part about the stabbing, it
24 actually happened in Texas; correct? I can show you
25 the document again.

1 MS. ARMIJO: May I approach, Your Honor?

2 THE COURT: You may.

3 A. Yes, this says he reported being stabbed
4 in the Texas Department of Corrections.

5 BY MS. ARMIJO:

6 Q. Because?

7 A. Because of being an SNM Gang member.

8 Q. Now, you're also aware in records where --
9 I believe we talked about he refused to have
10 psychiatric evaluations; correct?

11 A. Or declined visits. Might be -- I mean,
12 they noted as refused or declined or he would say,
13 "My meds are fine," and then he wouldn't go.

14 Q. Well, I'm referring to --

15 A. There are a lot of visits that he
16 declined, like a dozen or more.

17 Q. He declined, but do they also say refused?

18 A. Yes.

19 Q. So your word is "declined," but would you
20 agree that a lot of medical records say refused?

21 A. Those words are equivalent in this case,
22 yes.

23 Q. Okay. But we're going off the medical
24 records. So wouldn't we want to be as accurate as
25 possible as to what the medical records says?

1 A. Okay.

2 Q. Would you not agree?

3 A. I don't think there is a meaningful
4 difference between those two words. We can say
5 "refused." I'm happy to say "refused."

6 Q. Now -- and I believe you talked about the
7 changes in his medicines at times; correct?

8 A. Yes.

9 Q. And you're aware that sometimes he doesn't
10 take his medicine as directed.

11 A. That's true.

12 Q. And in fact, in 2013 he refused to take
13 some of his seizure medicine and was told that
14 stopping it suddenly could put him at risk for
15 seizures?

16 A. I believe that that did happen. I don't
17 know that it happened -- I mean, I can't confirm in
18 my memory that it happened in 2013, but the way
19 that's noted in the medical record is, sometimes he
20 has to sign a consent if he's declining a
21 medication. Oftentimes it will just be noted that
22 patient refused if he wasn't taking the medication
23 that day.

24 Q. I'm actually referring to a psychiatric
25 encounter that is Perez 1472.

1 MS. ARMIJO: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 MS. FOX-YOUNG: Your Honor, may I just see
5 the document?

6 MS. ARMIJO: I believe it's just that
7 front page.

8 A. Okay. So this is about actually Klonopin
9 and Effexor. And Klonopin is a benzodiazepine like
10 Valium, and Effexor is an antidepressant. And he
11 stopped them though the physician said stopping
12 them -- this is like one of the medications you
13 shouldn't stop suddenly. So what I'm looking for is
14 whether or not he ever took them or whether he
15 refused advice to take them. I don't know, based on
16 this.

17 BY MS. ARMIJO:

18 Q. Well, there is documentation there as to
19 what the doctor notes, or the medical
20 administration.

21 A. Right. Okay. So Effexor was refused for
22 two doses and Klonopin was refused for two doses,
23 which is like 18 hours. And he said he didn't want
24 any psych meds at that time. He was also taking
25 Dilantin, which is a seizure medication, and

1 Benadryl and Haldol.

2 Q. All right. So then I guess you would
3 agree that at least on April 2 of 2013, this is not
4 just one of his -- there are several times that he
5 just outright refuses medication; correct? Like you
6 indicated?

7 A. That seems like one of those.

8 Q. But you indicated that it just indicates
9 like in the log, because --

10 A. Right.

11 Q. -- and to be clear --

12 A. There should be a log that goes along with
13 that log that reflects what the doctor's writing.

14 Q. This is actually a psychiatric encounter
15 log; right?

16 A. Right.

17 Q. This is different from the logs, because
18 what you have from Corrections is a log with the
19 nurse who daily dispenses medication; correct?

20 A. Right. So there's nursing notes as one
21 file, and then other pages there's medication
22 administration records where it actually gets
23 initialed every tablet that goes out.

24 Q. And do you know where he was on April 2 of
25 2013?

1 A. He was in the hospital incarceration
2 facility prior to going back to the University for
3 his surgical revision. So this was the period of
4 time when he had tubes coming out of everywhere and
5 in what was called the ICU facility there.

6 Q. All right. And they did tell him -- it
7 indicates that stopping would affect possible
8 seizures?

9 A. That's right. They did say that.

10 Q. And I believe on your direct testimony you
11 spoke about one time where he removed his tubes. Do
12 you recall that?

13 A. Yes.

14 Q. And he was sent back to the hospital?

15 A. That's right.

16 Q. That was like in December 2012?

17 A. That was -- I believe that that's right.
18 I didn't note that on my notes. So he was -- if you
19 look at that colorful calendar, there's about a week
20 period where he went back to the hospital in
21 December, and I'm pretty certain that that was the
22 time that he pulled his G tube out.

23 Q. And actually, he pulled his tubes out --
24 in the mental health and psychiatry notes it
25 indicates that he had behavioral problems

1 regarding --

2 MS. FOX-YOUNG: Your Honor, I would just
3 object to the hearsay and ask for a question that
4 doesn't include hearsay elicited. If she has a
5 question and wants to refresh the witness, I think
6 that's appropriate; or impeach.

7 THE COURT: Well, if you need to ask a
8 question and then have Dr. Brislen answer. But
9 don't read from the document.

10 BY MS. ARMIJO:

11 Q. All right. Dr. Brislen, did he actually
12 remove his tubes and there was a finding of
13 self-manipulating?

14 MS. FOX-YOUNG: Your Honor, she's just
15 reading from the document.

16 MS. ARMIJO: I'm not.

17 MS. FOX-YOUNG: Same objection.

18 MS. ARMIJO: I'm sorry.

19 THE COURT: Why don't you just ask her
20 what the note says. If she doesn't remember what it
21 says, you can refresh her memory, and then we can go
22 from there. But don't just read from the document.

23 BY MS. ARMIJO:

24 Q. All right, Doctor. Do you recall there
25 being any psychiatric notes in reference to that

1 incident?

2 A. I remember he had a number of psychiatric
3 notes during that time when he was in the hospital
4 facility and he struggled quite a bit with complying
5 with his therapy during that time. I can comment to
6 that generally, if you like, or I can --

7 Q. Okay. And was there an assessment done as
8 to why -- a psychiatric assessment done as to why he
9 pulled his tubes?

10 A. I don't know that that triggered the
11 specific visit, but they did talk about it.

12 Q. And what did they say?

13 A. He was frustrated and angry and wanted to
14 be able to eat with his mouth, is my memory of what
15 I read. So that may not be in the note that you saw
16 there, but the feeding tube got pulled. It
17 wasn't -- there was no other disruption of his
18 lines.

19 MS. ARMIJO: All right. May I approach?

20 Q. And I'm showing Perez 1483. And I guess
21 I'm referring to that first paragraph.

22 A. So what I'm reading here is not consistent
23 with the visit to the University Hospital.

24 Q. Okay. Well, that's part of the medical
25 records; correct?

1 A. Yes, it is.

2 Q. Okay. And it's part of his psychiatric
3 evaluation for going to the hospital; correct?

4 A. I'm sorry? Say that again.

5 Q. Well, what's the date of that?

6 A. So this is 12/20 of '12. I can't remember
7 if this is before or after he went back to the
8 University Hospital. I think it's after he was
9 already back, and it looks like they had a meeting
10 with his physician and his psychiatrist and the
11 nurse and another mental health staffer and the
12 patient to talk about, was he deliberately trying to
13 get back to UNM by sabotaging his care.

14 Q. Okay. And to be fair, on your document
15 you have -- it's in green, so it looks like he's in
16 the prison hospital at that time?

17 A. That's right, yeah.

18 Q. Okay. And so are there other reasons that
19 they note for him going back, other than what you've
20 already testified to?

21 A. You mean the time that he was actually
22 admitted at the hospital, why did he go back? Are
23 you asking me medically why he went back to the
24 hospital or are you asking me what this says?

25 Q. I'm asking you, the assessment that was

1 made as to the pulling of the tubes. They give
2 several reasons and I think you've covered a couple,
3 but you didn't cover Number 1.

4 A. Right. Okay. So the way that I read this
5 note is that he was acting out, and there is concern
6 that he might end up back in the hospital. And so
7 all of these people met and talked about his
8 behavior and how they might make him feel more
9 comfortable or more in control, and the plan is,
10 like, to offer him television time, talk about
11 finding out what he does like or doesn't like, and
12 make him feel more in control of his health care
13 decisions. And that was the plan that they came up
14 with. So...

15 Q. Well, I guess I'm not asking about the
16 plan. I'm asking about what the Number 1 reason was
17 that they felt that he was going -- that he pulled
18 his tube.

19 A. Right. So that he could get back to UNM.
20 And this says, "Where he gets pain meds." Is that
21 what you're asking?

22 Q. Yes.

23 A. Yes.

24 Q. All right. Now, I believe you've already
25 indicated that -- I'm sorry. I'm going through

1 things that I've covered already.

2 Now you indicated that he's on a special
3 diet; correct?

4 A. Yes, that's right.

5 Q. And that special diet is for diabetes?

6 A. It's for diabetes, but it's also for his
7 intestinal motility issues.

8 Q. Okay. And so are you aware of whether or
9 not they can purchase items separate from the food
10 that they're provided by the --

11 A. Yes. As far as I know, yes, they can.
12 He's still in control of his own diet to some
13 degree.

14 Q. All right. Do you know whether or not he
15 is violating the diabetes diet by purchasing things
16 that would not be consistent with that?

17 A. That has been mentioned on and off for a
18 long time, yes.

19 Q. Okay. Mentioned that he is; correct?

20 A. Right, that he eats foods that aren't
21 consistent with what you would recommend a diabetic
22 person eat.

23 Q. And how does that impact things?

24 A. You know, his diabetes has actually always
25 been fairly well controlled. He's obviously

1 overweight. I would be concerned about his
2 intestinal motility being a more immediate threat to
3 him than his blood sugar levels.

4 Q. Now, in your report you talk about -- you
5 focus in on the time of the murder of Javier Molina;
6 correct?

7 A. Focused in on? I didn't comment
8 specifically on the murder except that it happened,
9 I think.

10 Q. Okay. We already know that you did not
11 listen to the recordings. Have you read any police
12 reports in reference to it?

13 A. No.

14 Q. Are you aware or have you been told what
15 his alleged role is in the murder?

16 A. Yes, I've been told.

17 Q. And what have you been told?

18 A. I was told that a piece of Mr. Perez'
19 walker was used to make what's thought to be the
20 murder weapon.

21 Q. And that's just told to you by the defense
22 in this case; you haven't looked at anything else;
23 correct? Reviewed any police reports or anything
24 else?

25 A. No, except that I've now been in this

1 courtroom, if you include the hearing and this
2 trial, probably almost five days. So whatever other
3 impression I might have picked up.

4 Q. Now, you are also aware from your
5 comprehensive review of the medical records that the
6 medicine is dispensed by a nurse from Corrections?

7 A. The medication is dispensed by nurses.
8 That's my understanding, yes.

9 Q. And so we know at a minimum he is -- he,
10 Mr. Perez -- while he's been in custody of
11 Corrections is visited by a medical professional
12 once a day; correct?

13 A. At least once a day, I would think, yes.

14 Q. And if he gets medicine -- do you know if
15 he gets medicine more than once a day?

16 A. Oftentimes, yes, he does.

17 Q. Okay. So then we know that he's visited
18 by a medical professional at least twice a day?

19 A. Or more.

20 Q. Or more; correct?

21 A. Correct.

22 Q. And they would have contact with him as
23 far as dispensing his medicine; correct?

24 A. I don't actually know the mechanism how
25 that works. I don't know if it's left outside his

1 door or if it's actually put in his hand. I don't
2 know any of that part.

3 Q. Okay. Well, wouldn't that be something
4 important for you to find out if it's actually --
5 well, they note in the records whether or not he
6 takes it; correct? Because we know that they also
7 note that he refuses it.

8 A. That's true. Those seem like different
9 things to me.

10 Q. Okay. Well, so if they just left it there
11 for him to take, you know, whenever he wanted to,
12 then they wouldn't know that he refused it; correct?

13 A. Unless he's standing there and he said, "I
14 don't want that."

15 Q. Okay. True. But then they would have
16 contact with him.

17 A. Yes.

18 Q. At a minimum, you know they have contact
19 with him when he refuses it; correct?

20 A. Yes. That makes sense.

21 Q. Okay. And it also makes sense that
22 they're just not going to leave medicine lying
23 around for any inmate to come get; correct?

24 A. Oh, true. Absolutely. What I was
25 imagining is that it might be like along with his

1 food or something.

2 Q. Okay.

3 A. And I just don't know. I don't know how
4 that's done.

5 Q. But you do know that he goes in and that a
6 nurse documents it; correct?

7 A. Documents that it was given. I don't know
8 actually specifically, and I didn't look
9 specifically to see if she notes that he put it in
10 his mouth or -- I don't know.

11 Q. All right. That wasn't important for you
12 to find out?

13 A. It honestly didn't occur to me until right
14 now.

15 Q. Okay. And then another question that I
16 have. Did you go and talk to any of his medical
17 providers?

18 A. No.

19 Q. Okay. And I believe in the notes that we
20 were provided with today, you specifically mentioned
21 that it would be helpful for you to go -- to get
22 notes from one of the doctors. Do you recall that,
23 if you check your notes?

24 A. This is on the outline?

25 Q. Yes.

1 A. I don't see it on the copy I have in my
2 hand, but there were records that I didn't have for
3 a while and that may just be an artifact on my notes
4 that I didn't have access to the discharge summary
5 from UNM and the neurology notes for followup. I've
6 since learned that there weren't any neurology notes
7 in followup, and I was able to obtain that discharge
8 summary. I think that's probably what you're
9 referring to.

10 Q. Okay. It specifically says it would be
11 helpful; correct? You make a notation.

12 A. Are you talking about my report or are you
13 talking about the little bullet --

14 Q. I'm talking about the notes that were just
15 provided to us today.

16 A. Yes.

17 Q. I think you referred to them, I don't
18 know, as an outline. I believe Ms. Fox-Young
19 referred to them as notes.

20 MS. FOX-YOUNG: Is there a question, Your
21 Honor?

22 MS. ARMIJO: There is a question.

23 THE COURT: I think it's a sufficient
24 question trying to figure out what the -- these are.

25 A. Can you show me where you see that

1 notation and I'll be --

2 BY MS. ARMIJO:

3 Q. Sure. Page 3. It's number 10, "I would
4 love to get ahold of the results of that next Monday
5 study and the discharge summary."

6 A. Oh, yeah. That's what I was talking
7 about, exactly. Those have all been discovered.
8 That's old. I did find those notes. And then when
9 I say it it's implied from these notes that
10 Dr. Saria -- she's the epileptologist at UNM. So
11 that was a note that I made to myself a while ago as
12 part of making this notation in this outline, and I
13 didn't take it off because I found it. But sorry, I
14 didn't mean to confuse you with that.

15 Q. When did you write these notes?

16 A. These are -- well, various times over the
17 whole year and a half. This is a running file that
18 I kept.

19 Q. Now, so you did talk to that doctor; you
20 were satisfied about getting that information;
21 correct?

22 A. I did not talk to that doctor. I did get
23 those records from UNM. So I got everything I
24 needed to answer my question.

25 Q. Okay. Did you talk to any of the

1 caregivers that -- any caregivers that Mr. Perez has
2 seen?

3 A. No.

4 Q. And I believe you go back to 1992;
5 correct?

6 A. The records go back to 1992.

7 Q. Okay. You've reviewed records since 1992;
8 correct?

9 A. Correct.

10 Q. Okay. And through -- what was the most
11 recent records that you've seen?

12 A. The most recent records that I reviewed
13 in-depth, as I mentioned, were in the summer of 2016
14 and then since this trial began, I briefly saw a
15 more recent set. I think Mr. Perez was ill
16 recently, and that set was sent to me, but I didn't
17 have time to review those prior to this.

18 Q. Okay. So you have not spoken to any of
19 his medical staff at all?

20 A. That's right.

21 Q. You are relying simply on the records?

22 A. Yes.

23 Q. Even though sometimes the records you say
24 you're assuming things; correct? Off of the
25 records? I believe you said -- and we'll get to

1 this in a second -- for instance, seizures, you
2 assume that they were witnessed seizures, but you
3 don't actually know that sometimes without talking
4 to the doctor; correct?

5 A. No, I don't think that talking to the
6 doctor would have offered extra help there. Witness
7 seizures you assume because they're described that
8 way.

9 Q. Okay. If they're described that way, do
10 you assume, then, that somebody actually saw it or
11 do you assume that it's self-reported?

12 A. I assume -- well, that's a good question.
13 I assume that someone saw it, because most of the
14 time it's written down as a witnessed seizure.
15 There is some possibility there that Mr. Perez could
16 have had a seizure and then contacted someone else
17 who acted as sort of an after-the-fact witness, I
18 suppose, but it's not really relevant to the medical
19 diagnosis to tease that out, so I didn't chase it
20 any further.

21 Q. Now, in reference to his seizures -- and
22 you talk a lot about behavior, that there can be
23 violent behavior during seizures; correct?

24 A. Post ictal.

25 Q. Post ictal?

1 A. During a seizure you wouldn't see someone
2 act violently.

3 Q. Well --

4 A. After the seizure.

5 Q. Well, during a seizure people can be
6 violent. You disagree with that?

7 A. Yes. I don't --

8 Q. And I'm not saying --

9 A. -- know of any kind of seizures that cause
10 people to be violent. I think of violence as, like,
11 targeted, directed action.

12 Q. And that's what I'm getting at.

13 A. Right.

14 Q. Okay. And I guess when I say "violent
15 behavior," I mean during a big seizure. My term,
16 not a medical term.

17 A. That's okay.

18 Q. Okay. You know, the person can shake, be
19 thrown against things, damage furniture, things like
20 that; correct?

21 A. Falling or shaking.

22 Q. Correct.

23 A. But they're not throwing something or
24 hitting something with a fist intentionally. That's
25 the distinction I'm making.

1 Q. Correct. Okay. I think we're on the same
2 page. And then you mentioned post the seizure --

3 A. Right.

4 Q. You talk about violent behavior.

5 A. That's right.

6 Q. And do you associate that with violent
7 behavior as being directed?

8 A. Yes. When I'm talking about how sometimes
9 in a post ictal phase, patients can become violent,
10 yes, I'm talking about that being directed. For
11 example, in my training, we were treating a patient
12 with seizures, and as they came out of the seizure,
13 I got punched in the face intentionally by the
14 patient, who was in this quasi-frightened
15 not-quite-conscious post ictal phase, and that's the
16 kind of thing I'm talking about.

17 Q. Well, and that's a good example, but then
18 that person may not have known what they were doing;
19 correct?

20 A. Correct. They did not know what they were
21 doing.

22 Q. As opposed to somebody after a seizure
23 going and getting a knife and stabbing someone.

24 A. That would be different.

25 Q. That's different.

1 A. Yes. Right.

2 Q. So when you're talking about directed
3 behavior or intentional behavior, it's still after
4 this seizure where, although they may not be
5 shaking, it's this level of consciousness where
6 they're unaware of their surroundings and may act
7 out physically. Would that be a fair assessment?

8 A. Yes.

9 Q. It's not directed behavior at a specific
10 person.

11 A. Well, it might be directed at anyone close
12 enough to get at.

13 Q. Correct. It's not, "I've been meaning to
14 kill you, so I'm going to go get a knife and kill
15 you."

16 A. That would not be post ictal, right.

17 Q. Okay. Now, I believe you indicate -- how
18 many witnessed seizures do you think that there are
19 in the medical records, other than the one at UNM
20 where it was -- and to be fair, the one at UNM you
21 say is eight days, but that is actually noted eight
22 days because of the EKGs -- not the EKG. EEGs --

23 A. Right.

24 Q. -- and other tests for his brain wave
25 activity; correct?

1 A. He was not conscience or able to
2 participate in any way with the outside world for
3 eight days. He seized that whole time.

4 Q. Okay. So we --

5 A. We knew that also, you know, confirmed by
6 EEG.

7 Q. Okay. So that is one of those incidents
8 where it would be a witnessed seizure; correct?

9 A. Sure. It's an interesting question,
10 because what we've been using the term witnessed
11 seizure for here, we mean obvious tonic-clonic
12 seizures. The one he had at UNM was not that type.
13 It was a different type of seizure. It was
14 witnessed because everyone participating in his care
15 knew what was happening.

16 Q. Okay. All right. And how many witnessed
17 seizures do we have outside of the UNM one?

18 A. Maybe five or six.

19 Q. And when was the last one?

20 A. Most recent one?

21 Q. Yes.

22 A. It was in August 2016.

23 Q. And do you have -- and some of this, you
24 indicate there is ambiguity in his medical records
25 regarding actual seizures; correct? The frequency

1 of seizures?

2 A. Not the witnessed seizures. Those are
3 clear. The ambiguity is my suspicion that he's
4 having others and pointing at particular incidents
5 as examples when he might have had more. Is that
6 what you mean?

7 Q. Yes. Okay. Now, then you would agree
8 that the best way to determine if he's having a
9 seizure is to witness it; correct?

10 A. In a community-dwelling person with
11 seizures, what would typically happen is an EEG
12 would be done, ideally during seizure activity, but
13 also at rest, to see if you can tell by brain waves
14 where the location of the seizure is in your brain
15 and where it starts, and whether or not there's
16 easily diagnosable ongoing sort of focus.

17 So then, once you've confirmed that you
18 have a disorder, the neurologist will counsel a
19 patient over time as to how to identify seizures and
20 how to counsel their family members or their social
21 structure to help them recognize those, and they
22 keep a journal. It's really hard to tell. And so
23 there's a gold standard. If somebody has an EEG
24 that shows seizure activity, then they are having a
25 seizure. There is no debating that.

1 Q. Okay. That would be the best way to
2 determine if there is a seizure; correct?

3 A. I'm trying to clarify your use of the word
4 "best." That's the most definitive way. The best
5 most useful way or most effective way. You're not
6 going to catch very many seizures with EEG, because
7 it's like a huge helmet full of wires that you have
8 to wear around, and you have to be in a facility
9 where they have this. So the best way is to have a
10 patient that knows a lot about seizures and
11 understands themselves that can keep track of what's
12 happening. You know, if you're like me, if you're a
13 clinic provider, you need a savvy, invested patient
14 with a social structure that can capture those.

15 Q. Okay. And the best way would be for -- in
16 addition -- okay, I guess you're saying the best way
17 would be for someone to document it themselves?

18 A. Yes. That would be great.

19 Q. Okay. Another way would be for somebody
20 to witness it?

21 A. Yes. That's another way.

22 Q. Okay. And if you can't actually witness
23 it, another way to do it would be to talk to a
24 person who witnesses the seizure; correct?

25 A. Like having a witness report it?

1 Q. Yes.

2 A. Yes. That would be another way.

3 Q. That would be one other way; correct?

4 Because I guess if we're talking about -- you talked
5 about the subclinical issues. The person is
6 confused; correct?

7 A. I'm sorry, you mean when they're having a
8 subclinical seizure?

9 Q. Yes.

10 A. I would say they're not really even
11 conscious. They might seem to be confused, if you
12 don't know what's happening. To a layperson, they
13 might just seem confused. But oftentimes they can't
14 really meaningfully speak or participate in social
15 stuff.

16 Q. Can't participate in social stuff,
17 confused, disoriented potentially?

18 A. Maybe. I mean, you wouldn't be able to
19 ask them, "Where are you," and they say, "I don't
20 know." So I don't know. I wouldn't use the word
21 "disoriented." That's a medical term.

22 Q. And so you might want to be able to see if
23 a person is having one of these types of seizures,
24 based upon that, by actually -- it would be helpful
25 if there was video of it, correct, of the person and

1 how they were acting at the time?

2 A. Yes. Anything to help you observe a
3 patient that's having these could be helpful.

4 Q. Anything would be helpful; correct? To
5 see if they were having these seizures; correct?

6 A. Sure.

7 Q. So then when we talk about that, you
8 indicated that the recordings you didn't think would
9 help you, and so you did not listen to recordings --

10 A. You asked --

11 Q. -- of Mr. Perez.

12 A. I thought that the question was whether
13 the recordings would help me tease out whether or
14 not he was sedated by his medication. And I still
15 feel like that wouldn't help me.

16 Q. Okay. Well, now I'm talking about
17 seizures. Would the recordings help you determine
18 whether or not he was having any seizures?

19 A. During the time --

20 Q. That he -- at any time -- well, because --

21 A. I feel very uncomfortable saying that I
22 could diagnose a seizure based on an audio
23 recording, especially for somebody that's not an
24 ongoing patient.

25 Q. But you just said that one of the things

1 that you consider is whether or not they're
2 confused, disoriented. Would you agree you would
3 want to know that anything could help you? I
4 believe I said video, and you said, "Sure, anything
5 would help me determine that"; correct?

6 A. Are you asking if I would be able to
7 diagnose a seizure based on a video of a patient
8 that I don't know? Because the answer is no.

9 Q. Well, but then you indicated that anything
10 would be helpful to you in determining whether or
11 not that was a possibility, I guess.

12 A. That's right. That's right. Exactly.
13 Because seizures are very hard to recognize,
14 especially subclinical seizures. And so if you're
15 trying to recognize them, I would want to have
16 access to everything that I could. If I had a high
17 degree of suspicion that somebody might be prone to
18 having seizures, it would be interesting to see
19 whatever kind of capture you had. But whether or
20 not that actually could contribute or would be
21 definite in making a diagnosis, you just have to
22 sort of gather everything you can and then make a
23 call on that.

24 Q. All right. Well, let's jump forward for
25 February of 2016 -- or January, February 2016. Do

1 you know from being in this courtroom that Mr. Perez
2 specifically -- oh, and it's also in your report --
3 that he's accused of making a confession in the
4 murder?

5 A. Right.

6 Q. Okay. Now -- and you found that important
7 to list in your report; correct?

8 A. I listed it in my report as a milestone:
9 This is the time period that I'm about to talk
10 about.

11 THE COURT: Ms. Armijo, would this be a
12 good time, if you're going to go into this
13 discussion --

14 MS. ARMIJO: Sure.

15 THE COURT: Let's take our afternoon
16 break.

17 All right. I haven't given these
18 instruction today, but let me give them now. Until
19 the trial is completed, you're not to discuss the
20 case with anyone, whether it's people involved in
21 the trial, your family, or anyone else. And that
22 includes your fellow jurors. If anyone approaches
23 and tries to discuss the trial with you, please let
24 me know immediately. Also, you must not read or
25 listen to any news reports of the trial. Don't get

1 on the internet and do any research for purposes of
2 this case. And finally, remember that you must not
3 talk about anything with any person who's involved
4 in the trial, even if it doesn't have anything to do
5 with the trial.

6 If you need to speak with me, simply give
7 a note to one of the court security officers or Ms.
8 Standridge. I won't repeat these again today, but
9 when we do break for the evening, do keep them in
10 mind, and we'll see how tomorrow goes as to whether
11 I give them tomorrow.

12 All right. We'll be in recess for about
13 15 minutes. All rise.

14 (The jury left the courtroom.)

15 THE COURT: All right.

16 MS. ARMIJO: Your Honor, can you admonish
17 the witness to not speak to --

18 THE COURT: You're still under
19 cross-examination, so don't speak to anyone about
20 your testimony at the present time.

21 All right. We'll be in recess for about
22 15 minutes.

23 MS. BHALLA: Your Honor, if I may really
24 quickly -- no, never mind.

25 (The Court stood in recess.)

1 THE COURT: All right. We'll go on the
2 record.

3 Mr. Maynard, Ms. Bhalla wanted to say
4 something before the break. Do you know what she
5 was wanting to talk about?

6 MR. MAYNARD: I'm not sure in particular.
7 I'll find out.

8 MR. LOWRY: Not be rude, but I think I was
9 next in line.

10 THE COURT: Go ahead.

11 MR. LOWRY: Your Honor, I made a request
12 of the United States to get the FBI 302 field notes.
13 There is some tension in the record here between
14 what happened back in March 6, 2017, with regard to
15 Lupe Urquizo's communication through the window of
16 his pod door. And what I've asked the United States
17 to produce is the FBI 302 field notes for all the
18 people that participated in the interviews of Lupe
19 Urquizo, Mario Rodriguez, and Timothy Martinez, so
20 we could sort this out. It's not as simple I think
21 as the United States would think, because this
22 involves the credibility of either Lupe Urquizo or
23 the case agent, Bryan Acee, in this matter. So
24 there is no way around the credibility issue at
25 play, and the field notes would be indispensable to

1 resolving who is being honest and who is not. And I
2 would ask that the Court order the Government to
3 produce those. I've made the request; they
4 declined. This trial is coming to an end and we
5 need those in order to wrap this up.

6 THE COURT: Are you handling this, Mr.
7 Beck?

8 MR. BECK: Sure.

9 THE COURT: It seems to me that these
10 would be Jencks material and that they ought to be
11 produced. Your thoughts?

12 MR. BECK: Yeah, this is something that I
13 think I discussed with the Court back before we
14 started this trial. And I sort of resent that it's
15 not as easy as the United States may think, because
16 I thought hard about this. Notes may be Jencks
17 material, and this Court held that. And what
18 happens is, they're Jencks material if they're
19 verbatim statements.

20 The FBI notes -- we produced Nancy Stemo's
21 notes this morning, and so this bolsters the
22 argument that I'm about to make. The FBI notes are
23 shorthand notes for what they take during a debrief.
24 They use those shorthand notes to write a more
25 robust 302, and so the only way in which there may

1 be Giglio information --

2 THE COURT: Do this. Turn over the
3 requested notes either to the Court or to Mr. Lowry,
4 and I'll take a look at them and make a decision. I
5 tend to think that most of the notes are verbatim,
6 particularly if they are in fact shorthand. That is
7 what Ms. Bean's doing. But if you don't want to
8 turn them over to Mr. Lowry, turn them over to me
9 and I'll find time to take a look at them.

10 MR. BECK: All right. And I think that's
11 inconsistent with the law to say under Jencks --

12 THE COURT: I know that Judge Brack has
13 one opinion and I have one. You can take a look at
14 mine. I think I may have been more liberal in
15 construing certain FBI statements than he was.

16 All right, Ms. Bhalla. Quickly, quickly.

17 MS. BHALLA: I can do it at another time,
18 Your Honor.

19 THE COURT: All right. All rise.

20 (The jury entered the courtroom.)

21 THE COURT: All right, Dr. Brislen.
22 You're still under oath. I'll remind you of that.

23 Ms. Armijo, if you wish to continue your
24 cross-examination of Dr. Brislen, you may do so at
25 this time.

1 MS. ARMIJO: Thank you, Your Honor.

2 THE COURT: Ms. Armijo.

3 BY MS. ARMIJO:

4 Q. Dr. Brislen, I believe we were talking
5 before the break about possibly listening to
6 recordings. You had mentioned that videos might be
7 helpful; correct?

8 A. That's right.

9 Q. Okay. And if you can't have a video, a
10 recording might actually be helpful.

11 A. Again, I'm not sure what you're asking
12 for. If you're asking me to make a diagnosis of a
13 seizure based on an audio recording, I'm going to
14 say no, I can't do that.

15 Q. Okay. Well, but if you can't make a
16 diagnosis as to a seizure on a recording, a
17 recording would tell you certain things; correct?
18 Such as it would tell you whether or not the person
19 was coherent? If they're answering questions.

20 A. It seems like it.

21 Q. Okay. If someone is having a conversation
22 and talking in a normal tone and there doesn't seem
23 to be any indication that the person is not
24 understanding the other person, that would be
25 helpful.

1 A. That they're not having a seizure at that
2 time.

3 Q. You would assume they would not be having
4 a seizure at that time?

5 A. That's what I'm saying.

6 Q. Okay. Let's talk about a hypothetical,
7 since you haven't listened to the recordings.

8 A. Okay.

9 Q. There is a recording between two
10 individuals.

11 A. Okay.

12 Q. And there seems to be no confusion by
13 either party.

14 A. Okay.

15 Q. If there seems to be -- if they seem to be
16 talking about an incident that happened in the past,
17 so there is some sort of recollection by the
18 individuals. And there doesn't seem to be any
19 indication of any type that the person is being,
20 like, on the ground thrashing about or anything like
21 that. Would you agree with me that that would be an
22 indication that the person was not having a seizure?

23 A. So until this point, my comments have been
24 limited to the type of seizures that we know Mr.
25 Perez to have. Early, early on, during direct, I

1 mentioned that there is such a thing as a partial
2 seizure. So just in case that's where you're
3 headed, partial seizure is something where you have
4 consciousness and then that can progress into a
5 lapse of consciousness. And that's a very
6 specialized other thing that is not what we believe
7 Mr. Perez has. So I just need to clarify that that
8 exists, and the situation that we're hypothetically
9 exploring might allow for that to be happening, but
10 what you just described would not take place during
11 one of the seizures that we've also been discussing
12 here, the kind of seizures that Mr. Perez has.

13 Q. Okay. And you still disagree with me that
14 listening to hours of calls would not rule out for
15 you the fact that he was having the type of seizure?

16 A. No, I'm sorry. I thought we were talking
17 about diagnosing seizures, not ruling out seizures,
18 which are two different things. Capturing seizures
19 and recognizing them is what's difficult in this
20 case.

21 Q. Okay. So you would not be able to say he
22 was having a seizure?

23 A. That's right.

24 Q. But you would be able to say he was not
25 having a seizure?

1 A. Probably. Again, this is hypothetical,
2 and --

3 Q. Under the circumstances that we talked
4 about where the person --

5 A. That's right. That does not sound
6 consistent with a seizure. That seems like -- you
7 could just say that's not a seizure.

8 Q. Because you cannot tell this jury that
9 either in January, February of 2016, that when Mr.
10 Perez was being recorded, he was having any type of
11 seizure; correct?

12 A. I have not heard those recordings. I
13 don't think -- what you're describing doesn't sound
14 like seizure. This is not something I've reviewed.
15 I believe that what you're describing is not a
16 seizure.

17 Q. And you don't have an opinion as to that;
18 correct?

19 A. What do you mean?

20 Q. Well, you do not have an opinion as to
21 whether or not he was having a seizure?

22 A. That is right. I do not have an opinion
23 about whether or not he was having seizures during
24 the time that he was recorded.

25 Q. And you do not have an opinion as to

1 whether or not he had a seizure on March 7 of
2 2016 -- or '14.

3 A. March 7 of 2014? That's right. I don't
4 have an opinion about that.

5 Q. Okay. And although you talk about his --
6 the possible effects of medication, you cannot tell
7 the jury whether or not he actually had any
8 impact -- any effect from those medications on March
9 7 of 2014?

10 A. That's right. I do not. I can't say
11 that.

12 Q. And you cannot say that during the time
13 period of January through February -- I'll be more
14 specific, because you know there's recordings.

15 A. I do. I don't know when they were, but I
16 know there are recordings.

17 Q. Okay. Well, you refer to them in your
18 report.

19 A. That they exist, that's right.

20 Q. Okay. So I assume that that would be a
21 relevant time period for you to consider.

22 A. I'm sorry, I thought you meant the
23 specific date.

24 Q. No.

25 A. Okay.

1 Q. Just the relevant time period; correct?

2 A. Okay.

3 Q. February 2016?

4 A. Okay.

5 Q. And you cannot tell this jury, you don't
6 have an opinion as to whether or not his medications
7 were actually impacting him significantly?

8 A. Right. All I can say is that the
9 medications he was on posed a risk of the things we
10 discussed earlier.

11 Q. And you also indicated -- and you had
12 plenty of time if you wanted to listen to those
13 recordings; correct?

14 A. I did not desire to listen to those
15 recordings. I don't think they're part of the
16 medical record.

17 Q. That was a conscious effort on your part
18 to not listen to them.

19 A. I didn't ask to listen to them.

20 Q. Okay. So you purposely didn't --

21 A. I didn't consider asking. I didn't
22 consider deciding not to. It didn't occur to me to
23 listen to them.

24 Q. Until when?

25 A. Now.

1 Q. Really? Because Mr. Beck asked you about
2 listening to the recordings back when you testified;
3 do you recall?

4 A. No, I don't.

5 Q. All right.

6 MS. ARMIJO: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MS. ARMIJO:

9 Q. And I'm referring to the transcript, page
10 299.

11 A. Okay. "Did you listen to the recordings?"
12 And I said no. Oh, you're asking why did I say it
13 hadn't occurred to me to listen to them?

14 Q. Well, you were saying that it didn't occur
15 to you till today, as if that wasn't a question
16 posed to you before.

17 A. Oh.

18 Q. Correct?

19 A. Even though I was asked had I listened to
20 them, I said no. It still didn't occur to me that I
21 might ask for them to listen to. I just don't feel
22 that's part of my role here.

23 Q. Well, part of your role here -- and in
24 looking at your report, isn't the whole point of
25 your testimony, at least part of the point of your

1 testimony is to try and give the jury about what was
2 going on with Mr. Perez during those recordings, the
3 potential for it?

4 A. I understand my role to be reviewing his
5 medical records in a way that can be translated into
6 a comprehensive picture of his medical health. So
7 what I did was review those medical records and
8 distill them into something that made sense that
9 could characterize what his health state was.

10 Q. But you specifically in your report
11 referred to the time period of January and February
12 of 2016, and you put in your report, "Around the
13 time that Mr. Perez is accused of confessing to a
14 role in the murder, he was similarly on a host of
15 medications with aggregate effects of sedation,
16 confusion, fatigue, and likely inability to think
17 clearly."

18 A. That's right. So that is a statement
19 regarding the medical records that cover that time
20 period.

21 Q. Okay. So -- but you're focusing in on
22 basically him -- and I'm using your words --
23 confessing to a role in the murder; correct?

24 A. That, as I mentioned before, is to
25 describe a milestone in time.

1 Q. Okay. And that milestone in time you in
2 your report indicate that he could have the effects
3 of sedation, confusion, fatigue and likely inability
4 to think clearly; correct?

5 A. That's right.

6 Q. But if you had listened to the recordings,
7 you could have possibly figured out if he was
8 confused in the recordings or if he had the
9 inability to think clearly based upon that
10 conversation; correct?

11 A. Because Mr. Perez isn't my patient, I did
12 not, whether by recording or in physical presence or
13 any other way, attempt to diagnose him with anything
14 in person. All I did was review the medical records
15 and translate those.

16 Q. But that certainly would have answered
17 that question for you; correct?

18 A. To me, that crosses that boundary of a
19 subject becoming my patient. And no, I don't -- I
20 mean, that just seems like an entirely separate
21 issue. Listening to him might have given some
22 insight into his mental capacity at that time,
23 maybe, but I don't know this person and I don't know
24 the circumstances, so I wouldn't have felt
25 comfortable making a judgment. I can't imagine.

1 Q. Okay. So you probably can't make the
2 judgment, then, before this jury whether or not
3 those medications were actually doing that during
4 those recordings; correct?

5 A. All I can tell you is what those
6 medications were and what their effects are.

7 Q. And the jury can determine whether or not
8 the medications actually had that effect by
9 listening to those recordings; correct?

10 A. I don't know. I suppose that that's what
11 they're being asked to do.

12 Q. All right. And then you also make the
13 determination that -- your conclusion is that you
14 anticipated that Mr. Perez would be in a walker or
15 wheelchair-dependent for the rest of his life;
16 correct?

17 A. That's correct.

18 Q. And you wrote this report in what year?

19 A. August of 2017.

20 Q. Okay. And you've seen him both at the
21 previous court hearing and then the last -- now,
22 this is your third day here. Do you see a walker or
23 wheelchair next to him?

24 A. No, but we've talked about that, that he
25 continues to decelerate his supportive devices to a

1 cane, after which time he falls. I would imagine
2 that if you had a physical therapy evaluation of the
3 way that he ambulates with a cane right now, the
4 determination would mean that that's not a safe
5 option for him. And actually, that's in the report,
6 as well. It's just further down in that paragraph.

7 Q. Well, I'm referring to your summary.
8 Actually, it's not in that paragraph. You indicate
9 that "I anticipate he will be walker- or
10 wheelchair-dependent for the rest of his life." And
11 I'm looking at page 7. And that would not be --
12 that would -- I take it, and I'm not a medical
13 professional -- I would take it that somebody being
14 dependent on a walker or wheelchair would mean that
15 they have to use that as opposed to it just being
16 merely a choice; correct? Dependent.

17 A. That's incorrect. So we can make choices
18 all the time. If you'll look at the bottom of page
19 2, what I wrote is that "The notes of March 2017,
20 for example, document use of a cane again. Though
21 he may prefer it, a cane is not an appropriate
22 choice of assistive device for him because of the
23 obvious increase in falls that he sustains when
24 using it. Progress to a cane in his medical records
25 is not in fact indicative of improved gait or

1 mobility." So that's how I see that.

2 Q. But yet you still wrote that he would be
3 dependent; correct?

4 A. I believe he remains dependent even though
5 he doesn't have one next to him at this moment.
6 That is the safest mechanism for him to use for
7 ambulation.

8 MS. ARMIJO: All right. May I have a
9 moment?

10 THE COURT: You may.

11 BY MS. ARMIJO:

12 Q. Did you believe he was
13 wheelchair-dependent back in January and February of
14 2016?

15 A. He was, I believe, though I could go back.
16 He was given a wheelchair for long-distance
17 transport and a walker for shorter distance. So he
18 had both devices then.

19 Q. And would it surprise you to learn that on
20 one of the recordings he indicates that he's on the
21 ground talking?

22 A. No. Why would that surprise me? I'm
23 sorry.

24 Q. Well, he's able to at least stand up, get
25 on the ground, and talk, and then get back up.

1 A. Okay.

2 Q. You would disagree?

3 A. That doesn't sound consistent with what
4 I've read.

5 Q. And just to be clear, in your -- not page
6 2, but on page 7, your summary portion, what you
7 state is that -- and this is just a yes or no --
8 that you anticipate that he will be walker- or
9 wheelchair-dependent for the rest of his life.

10 A. Yes.

11 MS. ARMIJO: I have no further questions.

12 THE COURT: Thank you, Ms. Armijo.

13 Anyone else beside Ms. Fox-Young have any
14 cross?

15 All right, Ms. Fox-Young, if you -- I
16 guess I should say redirect.

17 MS. FOX-YOUNG: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. FOX-YOUNG:

20 Q. Dr. Brislen, would you consider Mr. Perez
21 to be at risk of falling if he has a cane at this
22 time?

23 A. Yes.

24 Q. And I think you testified earlier that in
25 the 24 years of records that you've looked at, Mr.

1 Perez has cycled through the use of different
2 ambulatory devices; right?

3 A. That's right.

4 Q. So sometimes a wheelchair; right?

5 A. That's right.

6 Q. Sometimes a walker?

7 A. Right.

8 Q. And this is a cycle that repeats itself?

9 A. Right.

10 Q. And a person who is wheelchair-bound can
11 potentially get down on the floor on their butt, on
12 their back; right?

13 A. Right. Wheelchairs aren't just for people
14 that are paralyzed.

15 Q. You were asked if your opinions in this
16 case are based only on medical records. Do you
17 remember that?

18 A. Yes.

19 Q. Are your opinions also based upon your
20 training and experience?

21 A. Yes.

22 Q. Are they also based upon your clinical
23 work?

24 A. That's right.

25 Q. Mr. Villa and I asked you to review

1 medical records in this case; right?

2 A. That's right.

3 Q. But you're a Court-appointed expert.

4 A. That's my understanding, yes.

5 Q. And you're paid by the Court.

6 A. That's right.

7 Q. Mr. Villa and I don't pay you.

8 A. Right.

9 Q. And we never provided you with audio
10 recordings to listen to; right?

11 A. That's right.

12 Q. And we never asked you if you could give
13 any opinion as to whether or not Mr. Perez was
14 having a seizure at the particular time that he was
15 recorded.

16 A. That's right. I was not asked that.

17 Q. Right. And have you ever done a diagnosis
18 of a patient using an audio recording?

19 A. No.

20 Q. Do you think it's appropriate for a
21 medical doctor to make a diagnosis using an audio
22 recording?

23 A. I spoke with a patient over the break that
24 thinks has an urinary tract infection, and I agreed
25 with her. But in general, no. I mean, that's a

1 telephone conversation for something
2 straightforward. You would never diagnose someone
3 that you've never met based on an audio recording
4 for something as complex as a seizure.

5 Q. If given the opportunity, you examine your
6 patients in person; right?

7 A. That's correct.

8 Q. And Mr. Perez is not your patient; right?

9 A. No, he's not.

10 Q. And you were not asked to make a medical
11 diagnosis in this case; right?

12 MS. ARMIJO: Objection, leading.

13 A. Correct.

14 THE COURT: Overruled.

15 BY MS. FOX-YOUNG:

16 Q. You were asked some questions about a
17 report that you wrote. Did you author that report
18 for the purposes of this trial?

19 A. No, I didn't. That was a summary that I
20 wrote for you and Mr. Villa to understand sort of my
21 global assessment of the medical records that I'd
22 reviewed up to that point.

23 Q. Okay. And are you aware whether the
24 substance of that report was, in fact, transmitted
25 to the Government, to the prosecutors months ago in

1 the form of a letter?

2 A. I was not aware of that. I'm sorry. My
3 understanding at the time that that was written was
4 that there were some discussions about a possible
5 plea going on.

6 Q. I don't need to know any more, Dr.
7 Brislen. If you don't know, it's okay.

8 A. Okay.

9 Q. Did you testify on direct about mood
10 disorders that Mr. Perez has?

11 A. Yes.

12 Q. And the antisocial personality disorder
13 that you were asked about -- is that a mood
14 disorder?

15 A. No, it's not.

16 Q. It's not? How do you classify it?

17 A. It's a personality disorder. So it's this
18 whole other facet of psychiatry.

19 Q. You were asked about some medical records
20 that reflect self-reporting of problems or
21 incidents; right?

22 A. That's right.

23 Q. Including stabbings?

24 A. Right.

25 Q. Do you know if those self -- those

1 instances where there was self-reporting, if there
2 is confirmation documented in the reports by actual
3 injuries?

4 A. Oftentimes, yes. For example, the reports
5 of scars that were noted in his physical exam would
6 confirm his self-reported stabbing injuries.

7 Q. You talked about the eight-day seizure
8 that Mr. Perez suffered in September of 2012. I'm
9 sorry, in May of 2013.

10 A. That's right.

11 Q. And you also were asked about Mr. Perez'
12 refusals or declinations of medications; right?

13 A. That's right.

14 Q. Do you know, based upon all of the over
15 14,000 pages of records that you've looked at,
16 whether there is any record that shows that Mr.
17 Perez has seen a neurologist since that eight-day
18 seizure in May of 2013?

19 A. No, there is none.

20 Q. And if Mr. Perez is refusing medications,
21 do you know whether he was even on the right
22 medications for a seizure disorder?

23 A. I don't know that.

24 Q. Or whether he felt that they were working
25 for him?

1 A. His -- I can't really comment on that.
2 Most of his issues with his medications were due to
3 side effects or ineffective pain control.

4 Q. With respect to -- and you're not Mr.
5 Perez' medical provider. I understand. But with
6 respect to some of the medical providers who he has
7 had, you were asked if you obtained any information
8 directly from those providers. Do you recall that
9 line of questioning?

10 A. Yes, I do.

11 Q. In fact, you did request that records be
12 obtained from neurologists at UNMH; right?

13 A. That's right.

14 Q. And did you also request that records be
15 obtained from other providers like Dr. Andrade,
16 Dr. Rounseville?

17 A. Yes.

18 Q. And did we make efforts to obtain every
19 record we could at your request?

20 A. My understanding is yes.

21 Q. And at some point you indicated that you
22 had wanted to talk to one of the neurologists at
23 UNMH; right?

24 A. Yes.

25 Q. But were your questions and concerns

1 satisfied by the records that you ultimately
2 obtained?

3 A. I think so. The primary piece of
4 information that settled that was when we were able
5 to get the discharge summary from the
6 hospitalization that described their intent to
7 follow up with him as an outpatient. That was my
8 primary question, was what had happened that he
9 didn't get neurological followup; did they discharge
10 him thinking that he could go back to usual care?
11 And what was revealed in that discharge summary was
12 that neurology intended to follow him, and then I
13 was able to confirm with his other medical records
14 that that had not happened.

15 Q. Okay. You made some efforts to try to
16 reach that Dr. Saria, didn't you?

17 A. I did.

18 Q. You talked about -- and you explained to
19 the jury what the post ictal phase after a seizure
20 is, but I'm not sure you said how long a post ictal
21 phase lasts. Can you tell the jury how long it
22 lasts?

23 A. It's highly variable. It can be a couple
24 of minutes to several hours.

25 Q. When a person has a seizure, is it common

1 to become incontinent?

2 A. Very common.

3 Q. It's sort of an embarrassing occurrence,
4 isn't it?

5 A. Yeah. Seizures can be really frightening
6 and disorienting. That's part of why we think that
7 the post ictal period might be characterized the way
8 that it did because if you're just coming back into
9 a noisy room and you've lost continence or you're
10 lying on the floor suddenly or you've broken
11 something or something like that, it's very scary
12 for folks.

13 Q. And do you think that that fear and
14 disorientation might prevent somebody from reporting
15 a seizure?

16 A. I could see that it might.

17 Q. I think you said that the last witnessed
18 seizure that you're aware of from the records you
19 looked at was in August 2016?

20 A. That's right.

21 Q. Did you also say that the substantial part
22 of your review of the records only went through
23 2016?

24 A. That's right.

25 Q. And to be clear, we never asked you

1 whether you had an opinion as to whether Mr. Perez
2 was having a seizure at the precise time that he
3 allegedly talked to Billy Cordova; right?

4 A. That's right.

5 Q. And is it your opinion that you could not
6 give an opinion on that based upon an audio
7 recording?

8 A. That's right.

9 MS. FOX-YOUNG: No further questions, Your
10 Honor.

11 THE COURT: Thank you, Ms. Fox-Young.
12 Anyone else? All right. Did you have
13 something further, Ms. Armijo?

14 MS. ARMIJO: Yes, Your Honor.

15 RE CROSS-EXAMINATION

16 BY MS. ARMIJO:

17 Q. And Doctor, you don't have an opinion
18 about whether or not he was not only not having a
19 seizure, but also in that post ictal period;
20 correct?

21 A. That's right.

22 Q. All right.

23 MS. ARMIJO: That's all, Your Honor.

24 THE COURT: Thank you, Ms. Armijo.

25 Anything further, Ms. Fox-Young?

1 MS. FOX-YOUNG: No, thank you, Your Honor.

2 THE COURT: All right. Dr. Brislen, you
3 may step down. Thank you for your testimony.

4 All right. Do the defendants have their
5 next witness or evidence?

6 MS. DUNCAN: Yes, Your Honor. Mr. Baca
7 calls Clint Snodgrass.

8 THE COURT: Mr. Snodgrass, if you'd come
9 up and stand next to the witness box on my right,
10 your left, before you're seated, my courtroom
11 deputy, Ms. Standridge, will swear you in.

12 CLINT SNODGRASS,
13 after having been first duly sworn under oath,
14 was questioned, and testified as follows:

15 THE CLERK: State and spell your name for
16 the record.

17 THE WITNESS: It's Clint Snodgrass.
18 C-L-I-N-T, S-N-O-D-G-R-A-S-S.

19 THE COURT: Mr. Snodgrass.
20 Ms. Duncan.

21 MS. DUNCAN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. DUNCAN:

24 Q. Good afternoon, Mr. Snodgrass.

25 A. Good afternoon.

1 Q. Would you please tell us where you are
2 employed?

3 A. I'm employed by the City of Portland,
4 Oregon, as a police officer.

5 Q. How long have you been employed at the
6 City of Portland as a police officer?

7 A. I've been employed by the City of Portland
8 as a police officer for 11 years.

9 Q. And were you employed as a law enforcement
10 officer before you joined the Portland Police
11 Department?

12 A. Yes. I was a reserve police officer for
13 the city of Oregon City, Oregon.

14 Q. And what position do you hold at the
15 Portland Police Department?

16 A. I'm a police officer.

17 Q. I'd like to talk to you about an encounter
18 you had with an individual named Eric Duran on
19 November 11, 2017. Do you remember that encounter?

20 A. Yes, I do.

21 Q. Can you tell us how did you come into
22 contact with Mr. Duran?

23 A. A hotel in the area I patrol called in for
24 a couple of people who were sleeping in a car in
25 their underground parking garage. So Officer

1 Gillingham responded and asked for another officer
2 to assist him, and then I joined him in addressing
3 the two people sleeping in the car.

4 Q. So you drove into the parking garage; is
5 that correct?

6 A. Yeah, Officer Gillingham already pulled
7 his car in. The car was backed up to a concrete
8 wall that had the people sleeping in it. So he
9 pulled up directly in front of it, and then I pulled
10 up kind of offset from his car, kind of behind to
11 the side of his car.

12 Q. And after you parked your car in front of
13 Officer Gillingham's car, what did you do?

14 A. I parked behind his car.

15 Q. Behind his car. Excuse me.

16 A. Then he was up -- he had already ran the
17 car and verified that it wasn't stolen or anything
18 suspicious about the car. And he was up next to the
19 driver's side of the car, the white Chevy Equinox.

20 So I walked up with him and began looking
21 in the car. When I arrived, I saw the two occupants
22 were asleep in the car. So I walked up and joined
23 Officer Gillingham to look into the car. And it was
24 kind of a dim-lit garage, so I used my flashlight to
25 shine through the windows in the car and to see who

1 was in it, and make sure that it was safe to
2 awake -- make them wake up.

3 Q. How many individuals were in the car?

4 A. It was two. Front-seat passenger and the
5 driver.

6 Q. And how were they positioned in the seat?
7 Let's start with the driver. How was he positioned?

8 A. The driver was just asleep, kind of
9 sitting upright but asleep, kind of just head to the
10 side type asleep.

11 Q. And how about the passenger?

12 A. The passenger had fully reclined the seat
13 backwards and was laying back in the seat.

14 Q. Was Mr. Duran the driver or the passenger
15 of the car?

16 A. He was the passenger.

17 Q. When you walked up to the car and you
18 observed the two men, did you notice anything else
19 inside the car?

20 A. Yeah. So as I shined my flashlight in the
21 car, just for safety reasons I wanted to make sure
22 there's no surprises. And so I shone my light first
23 at where Duran was in the passenger seat and saw he
24 had a cellphone in his lap.

25 Then I moved over to the driver and shone

1 my light in his lap and initially I thought it was a
2 cellphone, but then I realized that it was the
3 muzzle of a gun protruding out from his hand. So at
4 that point in time I told Officer Gillingham the
5 driver had a gun, so we kind of backed up away from
6 the car.

7 Q. What did you do after you backed away from
8 the car?

9 A. So I went back to my patrol car and took
10 out my rifle that was in the patrol car and covered
11 the passenger side of the Equinox. I mean, just
12 kind of make sure that if they came out, we were
13 ready. Then Officer Gillingham went to the driver's
14 side -- well, the passenger side of my patrol car,
15 but then to cover the driver's side of the Equinox.
16 The two cars were facing head to head. And then he
17 started coordinating getting more officers there to
18 bring the subjects out safely.

19 Q. And at that point, were the two men in the
20 car still asleep?

21 A. Yeah, completely asleep, yeah.

22 Q. At some point did you do something to try
23 to wake them up?

24 A. Yeah. So once we had more officers there,
25 we then got on our P.A. system and announced,

1 "Portland police. We know you have a gun."

2 And there is no response from either
3 occupant of the car. So then we shone the takedown
4 lights on the front of the patrol car, which is just
5 white lights that shine forward. We turned those on
6 and then announced again in the P.A. system, and
7 this time the driver woke up.

8 Q. How loud is your P.A. system?

9 A. It's loud. I mean, especially in the
10 parking garage, it's very loud.

11 Q. And how bright is that light?

12 A. They're pretty light, pretty bright.
13 They're bright LED lights.

14 Q. So you said at that point the driver woke
15 up. Did the passenger wake up at that point?

16 A. No. There was no movement from the
17 passenger at that time.

18 Q. Once the driver woke up, what did you do?

19 A. So then the officers that were on that
20 side of the vehicle began giving commands to the
21 driver telling him we know he had a gun, keep his
22 hands where we could see them, and then have him
23 exit the car where we could still maintain control
24 of his hands. And he complied in doing that, and
25 walked out onto their side of the vehicle, which was

1 opposite where I was, and he was taken into custody
2 at that time.

3 Q. What did you do when the driver was taken
4 into custody?

5 A. So during -- when the driver exited the
6 Equinox, I then saw Duran in the passenger seat sit
7 up. So I started giving him commands to keep his
8 hands up where I could see them while they were
9 still dealing with the driver.

10 Q. And did Mr. Duran obey your commands?

11 A. He initially did. He put his hands where
12 I could see them. But on two separate occasions he
13 put his hands down into his lap area, which is
14 concerning to me because, one, I couldn't see them,
15 and I knew there was a gun in the car still. So I
16 started giving him words like, "Don't put your hands
17 where I can't see them. You're going to end up --
18 you're going to get shot if you do."

19 So he brought them back up. He did that
20 twice. But the second time he did it, he slid all
21 the way down completely out of view, kind of
22 slouched on the seat where I couldn't see any of his
23 person, his body, his head. But he kept his hands
24 up above the dash so I could see that his hands were
25 still there. Considering that was enough compliance

1 for me, so I just let him remain like that, which he
2 remained probably 30 seconds, then he sat back up,
3 kept his hands where I could see them, and was
4 compliant after that time.

5 Q. And when Mr. Duran slid down in his seat
6 so you could no longer see him except for his hands,
7 was that unusual to you?

8 A. It was unusual, yeah. I've never had
9 anyone do that before. Yeah.

10 Q. So after Mr. Duran sat up, how long did he
11 stay in the car?

12 A. He might have been -- seems like it was a
13 couple of minutes until we had the driver fully
14 secured in the back of the patrol car.

15 Q. And then what did you do?

16 A. So after the driver was secured, then we
17 started giving Duran commands to get out of the car
18 and walk back towards us, which he complied and he
19 was taken into custody at that point in time,
20 handcuffed, and then placed in the patrol car.

21 Q. Whose patrol car was he placed in?

22 A. He was placed in my patrol car.

23 Q. After he was placed in the patrol car,
24 what did you do?

25 A. So after, yeah, the two occupants were

1 secured in the patrol car, we then approached the
2 car, their car, to make sure that there wasn't no
3 one else in there, to make sure that it was safe.
4 So that's what I did, was approach their car.

5 Q. Did you search the car?

6 A. I did search the car, yes.

7 Q. What did you find? Let's start with the
8 cabin of the car. What did you find, if anything,
9 in the cabin?

10 A. So immediately I could see there was a
11 Glock semi-automatic handgun on the driver's seat.
12 And then in further searching the car, I found that
13 there were other magazines, gun magazines for
14 different caliber guns and some ammo in the car, as
15 well. And then on the passenger side under the
16 front passenger seat, kind of partially under the
17 seat, partially by the front floor board, there was
18 another semi-automatic handgun.

19 Q. So that other semi-automatic handgun was
20 found under the passenger seat where Eric Duran had
21 been seated?

22 A. Correct.

23 Q. Do you know what kind of gun it was?

24 A. It was some Egyptian type gun. I don't
25 recall offhand exactly.

1 Q. Do you know if that gun was loaded?

2 A. It had ammunition in the magazine, but
3 there was nothing in the chamber of the gun.

4 Q. And do you recall, did you find any extra
5 magazines that belonged to that gun?

6 A. I believe there was another magazine in
7 the car behind the passenger seat in the map pocket.

8 Q. Did you search any other area of the car
9 besides the cabin?

10 A. Yeah. We searched the hatch area, the
11 trunk area, and there was another gun -- like a gun
12 lock and a holster back there. That was about all I
13 can recall right now.

14 Q. Did you find a box of bullets?

15 A. There was a box of bullets located, yes.

16 Q. And did you find -- was there anything on
17 the box of bullets?

18 A. Yes. The box of bullets had what appeared
19 to be dried blood on the actual cardboard box.

20 Q. So after searching the car, did you find
21 anything else that you haven't testified about in
22 the search of that car?

23 A. No.

24 Q. So what did you do then?

25 A. So after finding magazines -- so that the

1 two guns that were in the car were nine millimeter
2 guns. I found some .45 caliber magazines. So I was
3 concerned that we might have missed a gun on one of
4 the two occupants of the car. So I had another
5 officer research the driver, and I went back to
6 research Duran.

7 Q. And what did your research uncover?

8 A. He was already handcuffed behind his back,
9 seated in the back of my patrol car. So I had him
10 exit out of the car and face away from me. When he
11 turned around, I could see that he had -- his hand
12 was kind of clasped. He had his fingers curled in.
13 So I asked him to uncurl his fingers so I could see.
14 And he kind of pulled away, and I grabbed his hand
15 and told him to open his hand up so I could see his
16 palm. And he did. And when he opened his hand, I
17 could see he had a bag of what appeared to be
18 heroin.

19 Q. Officer Snodgrass, can you demonstrate to
20 the jury how Mr. Duran was holding that bindle?

21 A. Yes. So if you can hear me, so his hands
22 are behind his back. So most people just relax and
23 let their hands hang. So he had one hand that was
24 open, and the other hand, he had his palm, fingers
25 kind of curled tightly. I don't know if you guys

1 can see. So he was trying to palm and conceal what
2 appeared to be heroin.

3 Q. And did you ask Mr. Duran what he had in
4 his hand?

5 A. Yes. I Mirandized him and asked what he
6 had in his hand. He said he found it in the patrol
7 car.

8 Q. Did you get the sense when Mr. Duran
9 had -- was putting in his fingers that he was trying
10 to hide it from you?

11 A. Yes. Based on how he was clasping it, and
12 then I told him to uncurl his fingers, he pulled
13 away, was his first reaction.

14 Q. So he told you that he had found the
15 bindle of heroin in the back of your patrol car?

16 A. That's correct.

17 Q. And did that explanation make sense to
18 you?

19 A. No, because I knew he was the first person
20 I had placed in the car for the day. And at the
21 beginning of my shift I always check the backseat to
22 make sure there's nothing back there, and I knew the
23 seat was clear and there was nothing back there. So
24 I knew it wasn't there before.

25 Q. And if he had, in fact, found a bindle of

1 heroin, would you have expected him to just hand it
2 over to you instead of trying to hide it from you?

3 A. Yes. If you found it and you wanted to
4 turn it over, that would be the first thing, "I
5 found this," and to me that would be a reasonable
6 response.

7 Q. So after Mr. Duran told you that he had
8 just found the bindle of heroin in your car, what
9 did you do?

10 A. Well, I explained to him that that's not
11 accurate, that I knew there was nothing else back
12 there. So then I continued my search of him to make
13 sure that there wasn't a missed weapon, and there
14 was nothing else found on his person, so I placed
15 him back in the patrol car.

16 Q. And at any point did you find additional
17 bindles of heroin?

18 A. Yeah. So there was a large substance --
19 or amount that was found in his hand in that bag.
20 And then when I got -- I transported him to the
21 precinct to be placed in a holding cell. And when I
22 got him out of the car to go into the precinct, I
23 located three other small little bindles of what
24 appeared to be a brown substance which appeared to
25 be heroin to me.

1 Q. Did you find those three little bindles?

2 A. There on the seat, and then on the floor
3 board of the back seat.

4 Q. And did you talk to Mr. Duran again about
5 the heroin and where he got it?

6 A. Yeah, I asked him -- I requested him
7 about it, and he said that he got it from the
8 driver; when he got into the car with the driver, he
9 handed it to him.

10 Q. And at any point did he discuss with you
11 why he would have gotten heroin from the driver?

12 A. He told me that he was an FBI informant
13 and that when he got in the car, the driver handed
14 him the heroin and he didn't want to reveal his -- I
15 guess what he was there for, so he kept it.

16 Q. Did you discuss his claim to be an FBI
17 informant with him any further?

18 A. Yeah. I mean, he kept reiterating he was
19 an FBI informant. I told him if he would provide me
20 with a name and somebody I could call to show up and
21 vouch for him, we could address it. But I was never
22 provided with a phone number or a name.

23 Q. Did you ask him for the name or number of
24 the handler more than once?

25 A. Yes. It was a continuing conversation. I

1 asked several times that I can recall.

2 Q. Did he ever tell you who he was working
3 with?

4 A. No, he never told me.

5 Q. Did he ever provide you a phone number for
6 you to call and verify his status?

7 A. No, he did not.

8 Q. So after you searched Mr. Duran and placed
9 him back in the patrol car, you then drove to the
10 station. At any point did you talk to Mr. Duran
11 about the gun?

12 A. Yeah, I asked him about the gun that was
13 located under the passenger seat, and he just denied
14 there being -- he didn't know there was any gun in
15 the car. He knew the driver had a gun, but he said
16 he had no idea there was any other gun in the car.

17 Q. And did that story seem credible to you?

18 A. No. Based off of his actions when we
19 first contacted him in the car, it didn't seem
20 logical that the gun was where we pointed and he was
21 unaware of it.

22 Q. Why do you say that?

23 A. Because where the gun -- how the car was
24 set up, the front floorboard, there's a little hump
25 between the front floorboard and where it goes under

1 the seat, so it's kind of a raised portion, and
2 that's where the gun was kind of set. So in my
3 opinion that if the car had been driven a short
4 distance, it would have either slid forward onto the
5 floorboard or backward under the seat further.

6 Q. So did it seem to you that the gun had
7 just been placed there?

8 A. Yes, it did.

9 Q. Based on your training and experience, do
10 you -- is it your opinion or do you have an opinion
11 about whether or not Mr. Duran was under the
12 influence of drugs during your encounter?

13 A. Initially when we got there -- because the
14 call came out that the hotel staff had knocked on
15 the window and got no response from the two
16 occupants, Officer Gillingham knocked on the window
17 and got no response from the two occupants, and then
18 they were completely asleep for probably five or
19 more minutes while we were there dealing with it
20 before they woke up, which is, to me, an indication
21 that you're under the influence of heroin.

22 Q. How would you describe Mr. Duran's
23 attitude during your encounter with him?

24 A. He kind of just had an I-don't-care
25 attitude, like it just didn't really matter.

1 Q. And while Mr. Duran was in the back of
2 your car, did he fall asleep at any point?

3 A. Yeah. So after I took him to the
4 precinct, placed him in a holding cell, I then drove
5 him to jail and he fell asleep from the precinct to
6 jail, which is maybe a 20-minute trip.

7 Q. So based on your encounter with Mr. Duran,
8 do you have an opinion as to his truthfulness?

9 A. Do I have an opinion?

10 MS. ARMIJO: Objection, relevance.

11 THE COURT: I didn't quite hear. Oh,
12 truthfulness.

13 MS. DUNCAN: Opinion as to Mr. Duran's
14 truthfulness, Your Honor.

15 THE COURT: It's a yes/no question at this
16 point.

17 A. Do I have an opinion?

18 BY MS. DUNCAN:

19 Q. Yes.

20 A. Yes.

21 Q. And what is that opinion?

22 MS. ARMIJO: Objection, relevance.

23 THE COURT: Overruled.

24 A. That he was not being 100% honest with me.
25

1 BY MS. DUNCAN:

2 Q. Since your encounter with Mr. Duran, have
3 you ever been contacted by the U.S. Attorney's
4 Office in New Mexico?

5 A. Not that I'm aware of, no.

6 Q. Have you ever been contacted by the FBI?

7 A. Not I'm aware of, no.

8 MS. DUNCAN: Your Honor, if I could have a
9 moment?

10 THE COURT: You may.

11 MS. DUNCAN: No further questions, Your
12 Honor.

13 THE COURT: Thank you, Ms. Duncan.

14 Any other defendant have direct
15 examination of Mr. Snodgrass?

16 All right, Ms. Armijo.

17 MS. ARMIJO: Thank you, Your Honor.

18 THE COURT: Ms. Armijo.

19 CROSS-EXAMINATION

20 BY MS. ARMIJO:

21 Q. Officer Snodgrass, now, when you said you
22 have an opinion as to him being truthful, that's as
23 to that day; correct? Or that evening?

24 A. My encounter with him, yes.

25 Q. You have no opinion as to him other than

1 that one incident; correct?

2 A. Correct.

3 Q. And nobody has contacted you and told you
4 to dismiss the case; correct?

5 A. For the City of Portland?

6 Q. Yes.

7 A. No.

8 Q. For the charges.

9 A. No.

10 Q. And nobody being -- I should say the
11 federal government; correct?

12 A. No, no one has told me to dismiss it.

13 Q. No one has asked you to give him favorable
14 treatment; correct?

15 A. Correct.

16 Q. And are the amount of drugs that he had,
17 was that consistent with a personal usage amount?

18 A. I would say no.

19 Q. You thought it was more?

20 A. Yes.

21 Q. Okay. And -- but it wasn't a large
22 amount; correct?

23 A. It wasn't a huge amount, no, but it was
24 more than what I consider to be personal use, and
25 couple that with the three extra little bindles that

1 were individually packaged.

2 Q. Okay. But you believe that he was under
3 the influence of heroin at the time; correct?

4 A. Based on how he initially presented
5 himself, being completely, like, deep asleep, yes.

6 Q. And are you aware that the FBI actually
7 served a search warrant on him for DNA to pursue the
8 case?

9 A. I was not aware of that, no.

10 MS. ARMIJO: All right. So I have no
11 further questions. Thank you.

12 THE COURT: Thank you, Ms. Armijo.

13 Any redirect of Mr. Snodgrass?

14 MS. DUNCAN: No, Your Honor.

15 THE COURT: Anybody else?

16 All right. Mr. Snodgrass, you may step
17 down.

18 Is there any reason that Mr. Snodgrass
19 cannot be excused from the proceedings?

20 MS. DUNCAN: No, Your Honor.

21 THE COURT: And Ms. Armijo, is that --

22 MS. ARMIJO: No, Your Honor. Thank you.

23 THE COURT: All right. You are excused
24 from the proceedings. Thank you for your testimony.

25

1 THE COURT: All right. Do the defendants
2 have their next witness or evidence?

3 MR. VILLA: Yes, Your Honor. Mr. Perez
4 calls Ernie Holguin.

5 MS. ARMIJO: Your Honor, may we approach?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MS. ARMIJO: Your Honor, we would just --
10 we believe that they're calling Ernie Holguin to try
11 to get in the hearsay statement of Mr. Perez and so
12 we would just ask that any statements by Mr. Perez,
13 since they are a party opponent, be excused.

14 THE COURT: Okay.

15 MR. VILLA: Your Honor, I won't ask about
16 any statements. There is a point in time when I'll
17 ask to approach the bench that I can make a record
18 about a statement I think the Court should admit,
19 but I won't elicit. I'll lead him to that point and
20 approach the bench at the appropriate time.

21 THE COURT: All right. Does that work?

22 MS. ARMIJO: Yes. Thank you.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: Mr. Holguin, if you'll come up

1 and stand next to the witness box, it's on my right,
2 your left, before you're seated, my courtroom
3 deputy, Ms. Standridge, will swear you in.

4 ERNIE HOLGUIN,

5 after having been first duly sworn under oath,
6 was questioned, and testified as follows:

7 THE CLERK: State and spell your name for
8 the record.

9 THE WITNESS: My name is Ernie Holguin.
10 E-R-N-I-E, H-O-L-G-U-I-N.

11 THE COURT: Mr. Holguin. Mr. Villa.

12 MR. VILLA: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. VILLA:

15 Q. Mr. Holguin, how are you employed?

16 A. I'm employed with the State of New Mexico
17 Department of Corrections.

18 Q. How long have you been employed with the
19 Department of Corrections?

20 A. Sixteen years.

21 Q. And prior to that were you involved in the
22 field of corrections?

23 A. No, sir.

24 Q. Law enforcement?

25 A. Yes, sir.

1 Q. Can you tell the jury about that?

2 A. Prior to Department of Corrections, I
3 worked for the City of Deming Police Department.

4 Q. How long did you work for the City of
5 Deming?

6 A. Two years.

7 Q. And before becoming a police officer with
8 the City of Deming, were you certified as a law
9 enforcement officer?

10 A. No.

11 Q. After your two years with Deming, did you
12 immediately go to the Department of Corrections?

13 A. Yes.

14 Q. Did you receive training upon your hire at
15 the Department of Corrections?

16 A. Yes, I had.

17 Q. Will you tell the jury about that
18 training?

19 A. I was sent to Santa Fe for eight weeks for
20 DOC corrections training, which consisted of
21 policies, procedures, use of force.

22 Q. And you said that was about 16 years ago?

23 A. Yes, sir.

24 Q. And I think you testified it's an
25 eight-week training?

1 A. Yes, sir.

2 Q. And then after the training, what did you
3 do?

4 A. I was sent to Southern New Mexico
5 Correctional Facility as a correctional officer 1.

6 Q. That's the facility that's right outside
7 Las Cruces?

8 A. Yes, sir.

9 Q. And what's a correctional officer 1?

10 A. It's just the first level of supervision.

11 Q. I guess that's the beginning or
12 introductory position?

13 A. Yes.

14 Q. What is a correctional officer 1's job
15 duties?

16 A. Security -- safety and security of the
17 inmates and the citizens.

18 Q. Can you tell the jury approximately what
19 year that was that you started as a correction
20 officer 1?

21 A. 2002.

22 Q. And how long were you a correction officer
23 1?

24 A. About seven years.

25 Q. After that seven years, what was the next?

1 A. I went to the STIU gang unit and K-9
2 officer.

3 Q. What is STIU?

4 A. Security Threat Intelligence Unit.

5 Q. When you say you moved up, is that a
6 promotion or a lateral transfer?

7 A. It's a lateral transfer.

8 Q. Did you receive any specialized training
9 for that transfer?

10 A. Yes, I did.

11 Q. Can you tell the jury about that?

12 A. I was sent to Santa Fe to do a two-week
13 course on just gang activities, what to look for.

14 Q. And when you're talking about gangs,
15 you're talking about prison gangs, I assume?

16 A. Prison and street, yes, sir.

17 Q. And street gangs?

18 A. Yes, sir.

19 Q. Now, when you obtained this new position
20 in the STIU, where did you work?

21 A. At Southern, still.

22 Q. Is it fair to say the entire 16 years of
23 your career has been at Southern New Mexico?

24 A. Yes.

25 Q. Have you ever worked in any of the other

1 facilities?

2 A. Just duty assignments when they send us to
3 different facilities to conduct interviews and
4 things like that.

5 Q. What was your job title when you first
6 became a member of the STIU?

7 A. Correctional officer 1.

8 Q. Still a correctional officer 1?

9 A. Yes.

10 Q. What's your job title now?

11 A. STIU, K-9.

12 Q. And you talked about K-9. What is that?

13 A. I have a K-9 that I run there at the
14 facility.

15 Q. And what does the K-9 do?

16 A. He's used for searching narcotics and
17 contraband.

18 Q. What kind of K-9 is it?

19 A. It's a Malinois, just a regular dog,
20 Malinois, that's been through an eight-week training
21 course.

22 Q. Did you go through the K-9 training course
23 with the K-9?

24 A. Yes.

25 Q. What are the job duties that you have now

1 in the STIU?

2 A. It's still the same, but I primarily
3 monitor gang activity and contraband introductions.

4 Q. How do you monitor gang activity?

5 A. We use phones, we use intel, we do
6 interviews, we walk amongst the inmates and talk to
7 them out there in the field.

8 Q. So when you say interviews, that includes
9 interviews of inmates?

10 A. Correct.

11 Q. And when you interview an inmate, do you
12 prepare reports or documentation?

13 A. Yes.

14 Q. Tell me about that. What kind of
15 documentation?

16 A. It depends on the situation. If we're
17 going to go interview a fight or something, we may
18 look up the inmates that were involved and look at
19 their background and see what's happened prior to
20 them being investigated.

21 Q. When you say, "look at their backgrounds,"
22 what do you mean?

23 A. We'll look at any incidents that have
24 occurred in the Department of Corrections.

25 Q. Now, are there certain inmates that are

1 identified as members of gangs as opposed to inmates
2 that aren't?

3 A. I don't understand that question.

4 Q. So let me ask the question a little bit
5 different way. Are there inmates that you know are
6 members of a gang?

7 A. Yes.

8 Q. And how do you make that determination?

9 A. Through their activities, their tattoos,
10 their involvement in different activities within the
11 prison that are illegal.

12 Q. And do sometimes you interview prison gang
13 members?

14 A. Yes, all the time.

15 Q. Do they always talk to you?

16 A. Yes.

17 Q. Let me ask you this. If you go to talk to
18 a prison gang member, do they often refuse to talk
19 to you?

20 A. Occasionally, but not too often.

21 Q. Now, what about if you're asking for
22 specific information about a specific incident?

23 A. It takes a little bit more time.

24 Q. Are there times when inmates will -- that
25 are members of a gang, at least known to you, refuse

1 to talk to you about a specific incident?

2 A. Yes.

3 Q. And refuse to provide any specific
4 information?

5 A. Yes.

6 Q. Now, when you write a report about an
7 interview and let's say it's of a prison gang member
8 and they actually give you some information, are
9 there any steps taken to try to protect that
10 paperwork from getting into the hands of the wrong
11 people?

12 A. Yes.

13 Q. Tell me about that.

14 A. Usually we'll assign a confidential
15 informant number to that individual, which only the
16 coordinator and the wardens will know about, and
17 then we'll write a memo based off that CI number.

18 Q. Do sometimes -- well, is there a term that
19 inmates refer to that paperwork as?

20 A. Basically they'll refer to it as ratting
21 or telling.

22 Q. But have you ever heard the term
23 "black-and-whites"?

24 A. No.

25 Q. You never heard that term before? Okay.

1 But clearly, if there was a document that you
2 prepared that says, "Person X made a statement about
3 this incident," and that information got into the
4 wrong hands, that could be a problem for person X.

5 A. Yes.

6 Q. Were you working at the Southern New
7 Mexico Correctional Facility during the time, March
8 2014?

9 A. Yes.

10 Q. And are you familiar with the Javier
11 Molina homicide?

12 A. Yes.

13 Q. Did you participate in any way in the
14 investigation of that homicide?

15 A. Yes.

16 Q. And just generally, without getting into
17 any specifics, what did you do to help with that
18 investigation?

19 A. I conducted interviews.

20 Q. How many interviews did you conduct?

21 A. Probably eight or ten.

22 Q. And can you tell me the individual -- not
23 necessarily by name, but who were the individuals
24 that you were interviewing? Are you talking about
25 inmates or guards, or who were they?

1 A. Inmates.

2 Q. Were all those interviews inmates?

3 A. Yes.

4 Q. Were they inmates known to you to be
5 members of a prison gang?

6 A. Yes.

7 Q. Were you working in conjunction with the
8 State Police on this investigation?

9 A. Yes.

10 Q. Do you remember who the case agent or, I
11 guess, the lead agent for the State Police was for
12 the Javier Molina homicide?

13 A. It would have to be Agent Palomares.

14 Q. So you were working with him?

15 A. We were turning our information over to
16 him, yes.

17 Q. When you say "turning information over to
18 him," what do you mean?

19 A. Any memos or any interviews that we
20 conducted went through my coordinator and then given
21 to State Police.

22 Q. Who was your coordinator?

23 A. Daniel Blanco.

24 Q. Is the coordinator -- was he Captain
25 Daniel Blanco?

1 A. He was a captain prior to being the
2 coordinate.

3 Q. Okay. So he was a captain, and then he
4 became the STIU coordinator?

5 A. Yes.

6 Q. So you did these eight or ten interviews;
7 right?

8 A. Yes.

9 Q. And then prepared memorandums of them?

10 A. Yes.

11 Q. And you provided those to your
12 coordinator, Blanco?

13 A. Yes.

14 Q. Did you also provide some of these
15 directly to Agent Palomares?

16 A. Yes.

17 Q. And that was because you knew he was
18 involved in the investigation of the homicide?

19 A. Correct.

20 Q. So I wanted to ask you specifically -- and
21 I don't want to get into anything that Mr. Perez has
22 said at this juncture. Did you conduct an interview
23 of Rudy Perez?

24 A. Yes, I did.

25 Q. Did you conduct that interview because

1 Warden Mulheron asked you to do that?

2 A. No.

3 Q. Let me ask you this. Before you conducted
4 the interview, did you know Rudy Perez?

5 A. I've talked to him off and on.

6 Q. And just from doing your job, walking
7 around and talking to people?

8 A. Yes.

9 Q. Was Mr. Perez handicapped?

10 A. Yes.

11 Q. In what way?

12 A. He required a walker.

13 Q. Did you ever see him in his cell prior to
14 the Javier Molina homicide?

15 A. No.

16 Q. Do you know if he was given accommodations
17 while he was housed at Southern New Mexico
18 Correctional Facility in his cell because he was
19 handicapped?

20 A. No. Well, I think he was allowed to keep
21 the walker in his cell.

22 Q. Okay. Now, without any -- I don't want to
23 get into anything Mr. Perez said. What was the
24 reason you interviewed Mr. Perez?

25 A. In conjunction with the homicide that

1 occurred, we interviewed all the inmates that were
2 that pod.

3 Q. Okay. And after you interviewed Mr.
4 Perez, you prepared a memorandum of that; right?

5 A. Yes.

6 Q. And do you remember the date you
7 interviewed Mr. Perez?

8 A. I don't.

9 Q. If I showed you the memorandum, would that
10 refresh your memory?

11 A. Yes.

12 MR. VILLA: May I approach?

13 THE COURT: You may.

14 BY MR. VILLA:

15 Q. Mr. Holguin, I'm showing you a two-page
16 document. Does that look like the memo you prepared
17 of your interview of Mr. Perez?

18 A. Yes.

19 Q. And will you look at that and see if it
20 refreshes your memory about when the interview
21 occurred?

22 A. Yes.

23 Q. It does?

24 A. Yes.

25 Q. Will you tell the jury when the interview

1 occurred?

2 A. 3/13/2014.

3 Q. And again, I don't want to know what Mr.
4 Perez said. Did you ask questions about Mr. Perez'
5 walker?

6 A. Yes, I did.

7 Q. And just a yes or no question. Did Mr.
8 Perez answer those questions?

9 A. Yes, he did.

10 Q. And the answers that he gave -- don't tell
11 me what they were -- were documented in your report?

12 A. Yes.

13 Q. And that's the same report that you gave
14 to Agent Palomares?

15 A. Yes.

16 Q. After you did this interview of Mr. Perez,
17 did you have concerns for Mr. Perez' safety?

18 A. Yes.

19 MR. VILLA: And Your Honor, may we
20 approach?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MR. VILLA: Your Honor, the statements
25 that I believe that we should be able to elicit that

1 Mr. Perez said to Mr. Holguin is that Mr. Holguin
2 asked him why he had not reported that the piece
3 from his walker was missing to anyone else, and Mr.
4 Perez' answer was that -- he said if he didn't, he
5 would have been handled. And Mr. Holguin asked him,
6 "Handled?"

7 And he said, "Yeah, they would beat me up,
8 or worse, if I had said something."

9 And the reason that we're offering that is
10 not necessarily for the truth, but to show Mr.
11 Perez' state of mind.

12 The other reason that we're offering that
13 is two-fold. It impeaches Agent Palomares. Agent
14 Palomares testified -- and I just have a clip of it,
15 Your Honor; I'll show it to the Government -- that
16 he never heard anything about Mr. Perez being
17 threatened. And the statement expressly says -- by
18 Mr. Perez -- that he was threatened. Mr. Holguin
19 has testified that he provided this memo to Agent
20 Palomares. So it impeaches Agent Palomares'
21 testimony that he never heard about Mr. Perez being
22 threatened.

23 It also impeaches Billy Cordova's
24 testimony about that there was just rumors and
25 nobody knew if he talked to STIU and those sorts of

1 things.

2 And also, pursuant to our trial briefs, it
3 impeaches Mr. Perez' own statements that the
4 Government has elicited both to Agent Palomares and
5 to Billy Cordova. And so under our -- pursuant to
6 our two trial briefs, Mr. Perez has a constitutional
7 right to present this evidence as well as under
8 803(6) to impeach his own statements.

9 THE COURT: This is a transcript from Mr.
10 Palomares?

11 MR. VILLA: Real-time transcript, Your
12 Honor, where he denied knowledge of any threats to
13 Mr. Perez.

14 THE COURT: What does that mean when it
15 says, "Did you articulate or have -- conduct an
16 investigation into whether Mr. Perez had been" -- it
17 says "threatened." What does that mean?

18 MR. VILLA: I think it's supposed to be
19 "threatened." The real-time hasn't been proofed.
20 But by the answer Mr. Palomares gives, I think it's
21 clear that it was "threatened."

22 THE COURT: All right. Ms. Armijo?

23 MS. ARMIJO: Your Honor, I don't see in
24 the transcript -- and I looked at it -- that Agent
25 Palomares was specifically asked or not when he was

1 provided with that and asked if, in fact, he
2 received this memo and if it had been provided.

3 THE COURT: I'm having trouble hearing
4 you.

5 MS. ARMIJO: As for impeachment with
6 Palomares, this record does not show that Agent
7 Palomares was confronted with this. So I think it's
8 improper impeachment because they would have to get
9 this to fail, at which point Agent Palomares, oh,
10 yes, this refreshes my recollection that I received
11 it. So I think it's improper impeachment.

12 As to the other reasons, it's self-serving
13 hearsay and it is trying to backdoor it in. So I
14 think it's improper for them to get in Mr. Perez'
15 statement of -- as you may recall, Your Honor, this
16 is part of the documents that came in at the hearing
17 that the United States didn't have and that Agent
18 Palomares -- because we had his complete file.
19 Agent Palomares didn't have this, and this is the
20 agent that had a whole stack of memos that we had
21 never seen, "we" being the United States or New
22 Mexico State Police and he had it in his own
23 personal possession.

24 MR. LOWRY: On behalf of Defendant Baca,
25 we'd object, Your Honor, because this is precisely

1 the antagonistic defense we've been complaining
2 about since day one. If you're going to allow this
3 testimony to come in, we'd ask for a severance or a
4 mistrial, because this bolsters the credibility of
5 the entire Government's case as we pointed out in
6 our trial briefs from day one.

7 MS. JACKS: Can I say it's also
8 testimonial? This is a statement of Mr. Perez to a
9 law enforcement officer after the crime under
10 questioning by the officer. So it's testimonial as
11 to anybody but Mr. Perez. We would object based on
12 the Sixth Amendment to its admission.

13 I'd also note the purpose that Mr. Vigil's
14 asking it as to Mr. Perez was being threatened.
15 What appears to have happened, Mr. Perez didn't tell
16 anybody, or it would have to be handled. He doesn't
17 communicate any direct threat to Officer Holguin.
18 So I don't think it even serves the merits being
19 offered.

20 THE COURT: Were you done?

21 MR. LOWRY: Yes, Your Honor.

22 THE COURT: Do you have anything you need
23 to say?

24 MS. BHALLA: Not on this particular one.

25 MR. VILLA: So my response would be to the

1 Government that Agent Palomares clearly testified
2 that he never heard anything about any threat
3 whatsoever. It was definitive. Mr. Holguin just
4 testified he provided this document to Mr. Perez
5 regarding the testimonial nature. It's not
6 testimonial to the exclusion of Mr. Perez. I
7 understand that it affects the rights of other
8 co-defendants, but that's not a reason to exclude it
9 as to Mr. Perez.

10 THE COURT: Well, as far as the transcript
11 of Palomares, I don't guess he was ever shown this
12 or anything like that. And so I can't -- at most he
13 said, "I never heard anything about it."

14 This being provided, I don't think that's
15 enough to allow this to come in for impeachment
16 purposes. It's just not enough of, if any,
17 contradiction.

18 As far as the statement itself, I do think
19 it's being offered for the truth of the matter by
20 Mr. Perez. What he said is what he wants the jury
21 to believe here, and so it's being offered for the
22 truth of the matter.

23 And so I think that I'll sustain the
24 objections. It is a testimonial testimony so we
25 have to be very careful with this material and I

1 don't think it fits within the two justifications.
2 So I'll sustain the objections and prohibit him from
3 stating what's in this document.

4 MS. ARMIJO: And Your Honor, we would ask
5 to have the last question stricken, because it is
6 based upon this. He asked him if after he was -- if
7 he had a concern for Mr. Perez' safety, and clearly
8 he's probably basing it on that. And I'm sorry, I
9 didn't have an opportunity to jump up.

10 THE COURT: I think I'll leave the
11 question. We've allowed some similar questions and
12 I didn't allow the jury -- I didn't allow Mr. Perez
13 to lay out before the jury why he did what he did,
14 but we are simply laying what he did, and I think
15 that's probably an appropriate line. So I'll deny
16 the request to strike that question.

17 MS. ARMIJO: Okay. Thank you.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right, Mr. Villa.

21 BY MR. VILLA:

22 Q. Mr. Holguin, you testified that after the
23 interview, you had safety concerns. At the time you
24 interviewed Mr. Perez, was he locked down?

25 A. Yes.

1 Q. What does lockdown mean?

2 A. He's confined to his cell.

3 Q. And is he -- if you're on lockdown as I've
4 just said it, are you allowed to get out?

5 A. No. Well, for one hour, for shower and
6 recreation.

7 Q. But not into a pod with other inmates?

8 A. No.

9 Q. So were your safety concerns based on if
10 he had at some point gotten released into a pod with
11 other inmates?

12 A. Yes.

13 MR. VILLA: May I have just a moment?

14 THE COURT: You may.

15 MR. VILLA: That's all the questions.

16 THE COURT: Thank you, Mr. Villa.

17 Do any other defendants have direct
18 examination of Mr. Holguin?

19 All right, Ms. Armijo.

20 MS. ARMIJO: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ARMIJO:

23 Q. Mr. Holguin, you indicated that you
24 interviewed eight to ten inmates; correct?

25 A. Yes.

1 Q. Those were all inmates that were in the
2 pod where Javier Molina was murdered.

3 A. Correct.

4 Q. They were all SNM Gang members.

5 A. Yes.

6 Q. It was an SNM pod.

7 A. Yes.

8 Q. Now, you indicated that Mr. Perez was
9 locked down, but actually, everybody was locked down
10 that was SNM; correct?

11 A. Yes.

12 Q. Okay. And so that wasn't anything in
13 particular to Mr. Perez?

14 A. Correct.

15 Q. Now, in reference to your -- you indicated
16 you spoke to Mr. Perez on March 13 of 2014; correct?

17 A. Yes.

18 Q. And now, when you spoke to him, did he
19 appear to be confused?

20 A. No.

21 Q. Did he appear to be able to understand
22 your questions?

23 A. Yes.

24 Q. Did he have -- did you have an ongoing
25 conversation with him?

1 A. Yes.

2 Q. He never dropped to the floor; correct?

3 A. No.

4 Q. You saw no sign that he would be having an
5 ongoing seizure, did you?

6 A. No.

7 Q. Any indication to you that he was having
8 difficulty understanding you in any way?

9 A. No.

10 Q. And this would have been on the 13th, and
11 the murder was on the 7th; correct?

12 A. Correct.

13 Q. All right. And when he came to see you --
14 well, in reference to these interviews in general,
15 this isn't -- you don't pass out these interviews to
16 other people, correct?

17 A. No.

18 Q. Because that could endanger a person;
19 correct?

20 A. Yes.

21 Q. And I believe you indicated that you
22 usually put CI numbers on people; correct?

23 A. Yes.

24 Q. Now, you testified previously in this
25 case; correct?

1 A. Yes.

2 Q. And in this case -- I should say in a
3 hearing just before the judge; correct?

4 A. Yes.

5 Q. Do you recall that at that hearing you had
6 actually brought paperwork that the United States
7 didn't have in its possession?

8 A. Yes.

9 Q. And that the United States had everything
10 that New Mexico State Police had; correct?

11 A. Yes.

12 MR. VILLA: Objection, lack of foundation.

13 THE COURT: Well, if he knows the answer
14 to these questions. If he doesn't know, he'll need
15 to say he doesn't know. But I'm not sure how else
16 to lay a foundation other than these questions.

17 Overruled.

18 BY MS. ARMIJO:

19 Q. So you were aware at least at that time
20 that the New Mexico State Police did not have many
21 of your memos; correct?

22 A. At what time?

23 Q. At the time of the hearing, do you recall
24 that you came to the hearing and you brought a bunch
25 of -- you had a file; correct?

1 A. Correct.

2 Q. And it was one of your personal files -- I
3 won't say personal, but it was your file,
4 work-related, on the Molina murder; correct?

5 A. It was copies of the memos; correct.

6 Q. And copies of the memos. And when you
7 came to testify, the prosecution did not have any
8 copies of those memos. Do you recall that?

9 A. Yes.

10 Q. And we actually had to make copies at that
11 time because -- and provide them to everybody
12 because they had not been disclosed; correct?

13 A. Yes.

14 Q. And you are aware that New Mexico State
15 Police was the -- and Agent Palomares was the
16 original investigating agency; correct?

17 A. Yes.

18 Q. And that the United States, the federal
19 government, basically got all the reports from New
20 Mexico State Police.

21 A. Yes.

22 MS. ARMIJO: Thank you, Your Honor. Pass
23 the witness.

24 THE COURT: Thank you, Ms. Armijo.

25 Mr. Villa, do you have redirect?

1 MR. VILLA: Just real quick, Your Honor.

2 Thank you.

3 THE COURT: Mr. Villa.

4 REDIRECT EXAMINATION

5 BY MR. VILLA:

6 Q. Mr. Holguin, there is no doubt, as you
7 just testified on direct, that you gave this memo
8 concerning the interview you did of Mr. Perez to
9 Agent Palomares; right?

10 A. It was originally sent to the coordinator,
11 Blanco, and then he disperses it from there. I
12 didn't hand it to him.

13 Q. You actually handed this particular memo
14 to Agent Palomares, didn't you?

15 A. No.

16 Q. Do you remember testifying at the previous
17 hearing in this case in December?

18 A. Yes, I remember testifying.

19 MR. VILLA: May I approach, Your Honor?

20 THE COURT: You may.

21 MS. ARMIJO: Mr. Villa, do you have a page
22 number?

23 MR. VILLA: Yes, 193.

24 BY MR. VILLA:

25 Q. Mr. Holguin, I'm showing you a copy of the

1 transcript of your testimony, and this is a question
2 that Ms. Fox-Young asked you. Let's see here. "Did
3 you ever talk to the State Police about these
4 findings concerning your investigation findings?"
5 Right?

6 A. Yes.

7 Q. You said, "I believe they received the
8 same memos that Captain Blanco, Coordinator Blanco,
9 received." That was your answer?

10 A. Yes.

11 Q. And then you were asked, "Agent Palomares
12 received the same memos"?

13 A. Yes.

14 Q. And you answered, "Yes, ma'am"?

15 A. Yes.

16 Q. And then you were asked, "How do you know
17 that?" And your answer was: "I gave them to him";
18 right?

19 A. Correct.

20 Q. And the next question was: "You gave them
21 to Agent Palomares?"

22 A. Yes.

23 Q. And your answer was "Yes"?

24 A. Yes.

25 Q. And this particular memo did not assign a

1 CI number to Mr. Perez, did it?

2 A. No.

3 Q. It just said his name.

4 A. Right.

5 MR. VILLA: That's all I have, Your Honor.

6 THE COURT: Thank you, Mr. Villa.

7 I guess we're going to keep going here. I
8 probably need to shut her down for the day.

9 MS. ARMIJO: I just have one question.

10 THE COURT: All right. Ask your one
11 question.

12 MS. ARMIJO: I promise to be quick.

13 RECROSS-EXAMINATION

14 BY MS. ARMIJO:

15 Q. Continuing on with that transcript, did
16 you also say -- "Did you give it to Agent Palomares
17 the same day that you wrote it?" And you say, "No"?

18 A. Correct.

19 Q. And then you indicated that you did not
20 remember when you gave it to him.

21 A. Correct.

22 MS. ARMIJO: No further questions. Thank
23 you.

24 THE COURT: All right. Thank you, Ms.
25 Armijo.

1 Anything further, Mr. Villa?

2 FURTHER REDIRECT EXAMINATION

3 BY MR. VILLA:

4 Q. It was given to him prior to the day of
5 that hearing, though; right? The day you testified
6 in December, you gave the memo before that day.

7 A. Yes.

8 MR. VILLA: That's it.

9 THE COURT: All right. Thank you, Mr.
10 Villa.

11 Anyone else?

12 All right, Mr. Holguin. You may step
13 down.

14 Is there any reason Mr. Holguin cannot be
15 excused from the proceedings?

16 MR. VILLA: No, he's free to go.

17 THE COURT: You're in agreement with that,
18 Ms. Armijo?

19 MS. ARMIJO: Yes, Your Honor.

20 THE COURT: All right. You are excused
21 from the proceedings. Thank you for your testimony.

22 All right. I appreciate your hard work.
23 We'll see you at 8:30 in the morning. Y'all have a
24 safe trip, if you're traveling, and a good evening.
25 I appreciate all you're doing for us.

1 (The jury left the courtroom.)

2 THE COURT: All right. Y'all have a good
3 evening.

4 MS. BHALLA: Your Honor, if I may, would
5 it be all right for us to discuss the issue in the
6 morning that I wanted to bring up today?

7 THE COURT: Yeah.

8 MS. BHALLA: Okay. Thank you.

9 (The Court stood in recess.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com